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No. 371 NEW DELHI, SATURDAY, SEPTEMBER 15, 1951

NOTICE

The undermentioned Gazette of India Extraordinary were published during the week ending the 12th September 1951.—

Issue No.	No. and Date	Issued by	Subject
130	S. R. O. 1338, dated the 30th August 1951.	Ministry of Food and Agriculture	Direction from Central Government under section 4 of the Essential Supplies Act, 1940 in relation to the prohibition of export of mustard oil and mustard seed from the State of Assam.
131	S. R. O. 1339, dated the 31st August 1951.	Ministry of Commerce and Industry.	Notification issued by the Iron and Steel Controller under Clause 11B of the Iron and Steel (Control of Production and Distribution) Order, 1941.
132	S. R. O. 1340, dated the 1st September 1951.	Ministry of Law.	Declaration that the provisions of section 29 of the Code of Civil Procedure, 1908 shall apply to all civil and revenue courts in Pakistan.
	S. R. O. 1341, dated the 1st September 1951.	Ditto.	The Code of Civil Procedure (Second Amendment) Act, 1951 shall come into force with effect from 1st September 1951.
	S. R. O. 1342, dated the 1st September 1951.	Ditto.	Specifying some officers in Pakistan to whom a summons may be sent for service on a defendant who is a public officer in Pakistan.

Copies of the Gazette Extraordinary mentioned above will be supplied on demand to the Manager of Publications, Civil Lines, Delhi. Demand should be submitted to us to reach the Manager within ten days of the date of issue of the Gazette.

PART II—Section 3

Statutory Rules and Orders Issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

MINISTRY OF HOME AFFAIRS

New Delhi, the 5th September 1951

S.R.O. 1378—In exercise of the powers conferred by sub-section (2) of Section 1 of the Scheduled Areas (Assimilation of Laws) Act, 1951 (XXXVII of 1951), the Central Government hereby appoints the 1st day of October 1951, as the date on which the said Act shall come into force.

[No. 16/6/51-Judicial.]

R. N. PHILIPS, Dy. Secy,

MINISTRY OF STATES

New Delhi, the 3rd September 1951

S.R.O. 1379.—Corrigendum.—In the Appendix to the Ministry of States notification No. S.R.O. 1038, dated the 3rd July 1951, published at pages 1011 to 1030 of the Gazette of India, dated 14th July 1951, Part II, Section 3:—

- (i) In section 34A for the words and figures "Insertion of a new section 34A in Assam Act XVII of 1947" the words "Collection of tax by dealers" shall be substituted.
- (ii) In sections 19A, 32 and 51 for the word "Commissioner" substitute the word "Taxation Officer".
- (iii) In section 50 for the word "Commissioner's" substitute the word "Taxation Officer's".

[No. 192-Econ.]

E. HERD, Under Secy.

MINISTRY OF FINANCE
(Department of Economic Affairs)

New Delhi, the 6th September, 1951.

S.R.O. 1380.—In exercise of the powers conferred by clause (1) of the Article 258 of the Constitution, the President hereby entrusts with effect from the 28th day of August 1951, to the Government of Hyderabad, with their consent, the functions of the Central Government under the Explanation to section 25 of the Negotiable Instruments Act, 1881 (XXVI of 1881) subject to the condition that, notwithstanding this entrustment, the Central Government may itself exercise the said functions should it deem fit to do so in any case.

[No. F. 7(13)-FI/51].

F. C. DHAUN, Under Secy.

CHARTERED ACCOUNTANTS

New Delhi, the 6th September 1951

S.R.O. 1381.—In exercise of the powers conferred on them by clause (b) of sub-section (2) of Section (9) of the Chartered Accountants Act, 1949, the Central Government is pleased to nominate Shri P. C. Dasgupta, Controller of Commercial Audit in the Office of the Accountant General, Food Relief and Supply, to the Council of the Institute of Chartered Accountants of India vice Dr. Tara Chand resigned.

[No. F.65(5)-ICL(A)/51].

New Delhi, the 11th September 1951

S.R.O. 1382.—In pursuance of clause (iv) of sub-section (1) of section 4 of the Chartered Accountants Act, 1949 (XXXVIII of 1949), the Central Government hereby directs that the following amendments shall be made in the late Ministry of Commerce Notification No. 63(15)-Law(B)/50, dated the 24th October 1950:—

(1) For clause (3) of Paragraph A, the following clause shall be substituted, namely.—

"(3) He shall have been in practice as an auditor on the 1st July 1949, shall have continued in practice thereafter and shall have at the time of his application for enrolment,—

(a) a minimum practice of ten years; and

(b) at least 15 units, including a minimum of five public companies with limited liability, under his audit".

(2) For Paragraph B, the following paragraph shall be substituted namely:—

"B. In the case of a person who has not passed one of the examinations mentioned in Paragraph A above, he shall have been in practice as an auditor on the 1st July 1949, shall have continued in practice thereafter and shall have at time of his application for enrolment—

- (a) a minimum practice of ten years; and
- (b) at least 15 units, including a minimum of five public companies with Limited liability with a total paid up capital of Rs. 30 lakhs for all the units put together under his audit."

[No. 63(15)-ICL(A)/50.]

B. K. KAUL, Dy. Secy.

New Delhi, the 4th September 1951

S.R.O. 1383.—In exercise of the powers conferred by section 50 of the Reserve Bank of India Act, 1934 (II of 1934), the Central Government is pleased to appoint the following Auditors, as Auditors of the Reserve Bank of India for the year 1951-52, namely:—

1. Messrs. S. B. Billimoria & Company, 113, Esplanade Road, Bombay.
2. Messrs. Sastri & Shah, 15, Armenian Street, Madras.
3. Mr. P. K. Ghosh, 17, Mangoe Lane, Calcutta.

[No. 3(69)FI/51.]

New Delhi, the 11th September 1951

S.R.O. 1384.—In pursuance of sub-section (4) of section 29 of the Banking Companies Act, 1949 (X of 1949), the Central Government hereby gives notice of its intention to make with effect from the 22nd day of December, 1951, the following amendments to Form A (Form of Balance Sheet) and Form B (Form of Profit and Loss Account) set out in the Third Schedule to the said Act, namely:—

I Form A—Form of Balance Sheet—

(a) *Capital and Liabilities side.*—(i) For the heading 'RESERVE FUND' (b) the heading 'RESERVE FUND AND OTHER RESERVES' shall be substituted.

(ii) For the item 'Current Accounts and Contingency (unadjusted) accounts' under the heading 'DEPOSITS AND OTHER ACCOUNTS' the item 'Current Accounts, Contingency Accounts, etc.' shall be substituted.

(iii) For the Heading 'BORROWINGS FROM OTHER BANKS, AGENTS, ETC.,' the heading 'BORROWINGS FROM OTHER BANKING COMPANIES, AGENTS, ETC.' shall be substituted.

(iv) For the heading 'OTHER LIABILITIES (to be specified)' (c) the heading 'OTHER LIABILITIES (c)' shall be substituted.

(v) For the existing heading 'PROFIT AND LOSS: Less appropriation thereof' the following heading shall be substituted:

'PROFIT AND LOSS'

Profit as per last balance sheet—

Less appropriations—

Add profit for the year brought from the Profit and Loss Account—'

(b) *Property and Assets side.*—(i) For the item 'In hand and with Reserve Bank (including foreign currency notes)' occurring under the heading 'CASH' the item 'In hand and with Reserve Bank and Imperial Bank (including foreign currency notes)' shall be substituted.

(ii) The item 'Balances with other Banks (showing whether on deposit or current account)' occurring under the heading 'CASH' shall be shown as separate main item and numbered accordingly.

(iii) The existing item 'BILLS DISCOUNTED AND PURCHASED (e) (Other than Treasury Bill of the Central and State Government):

- (i) payable in India
- (ii) payable outside India'

shall be omitted.

(iv) In item (i) under the head 'INVESTMENTS' after the word 'and State Governments and' the word 'other' shall be inserted.

(v) For the existing item 'LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS (other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors)

- (i) in India
- (ii) outside India'

the following shall be substituted, namely:

"ADVANCES—(other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors).

(I) Loans, Cash Credits, Overdrafts, etc.

- (i) in India —————
- (ii) outside India —————

(II) Bills discounted and purchased (excluding Treasury Bills of the Central and State Governments)

- (i) payable in India —————
- (ii) payable outside India ——————."

(vi) For the word 'Particulars' after the existing item "LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS" the following shall be substituted, namely, "Particulars of ADVANCES".

(vii) In the particulars under the existing heading 'LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS' wherever the expressions 'bank' or 'banks' occur there shall be substituted therefor the expressions 'banking company' or 'banking companies', as the case may be.

(viii) In the particulars under the existing heading 'LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS' after item (iv) two parallel lines shall be drawn in the inner column so that the total of the first four items of the particulars agrees with the amount shown against the main head.

(ix) For item (vii) of the particulars under the existing heading 'LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS' the following item shall be substituted, namely,

"(vii) Maximum total amount of advances including temporary advances made at any time during the year to directors or managers or officers of the banking company or any of them either severally or jointly with any other persons (ff)".

(x) In item (viii) of the particulars under the existing heading 'LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS'—

(i) for the word 'loans' the word 'advances' shall be substituted.

(ii) after the words 'as members' the brackets and letters '(ff)' shall be added.

(xi) For the heading 'BILLS FOR COLLECTION BEING BILLS RECEIVABLE AS PER CONTRA', the heading 'BILLS RECEIVABLE BEING BILLS FOR COLLECTION AS PER CONTRA' shall be substituted.

(xii) For the heading 'ACCEPTANCES, ENDORSEMENTS AND OTHER OBLIGATIONS per contra' the heading "CONSTITUENTS' LIABILITIES FOR ACCEPTANCES, ENDORSEMENTS AND OTHER OBLIGATIONS per contra" shall be substituted.

II. Form B—Form of Profit and Loss Account.

(a) *Income side*.—(i) For the heading 'Income (Less provision made during the year for bad and doubtful debts)' the heading 'Income* (Less provision made during the year for bad and doubtful debts and other usual or necessary provisions)*' shall be substituted.

(ii) The heading 'Transfer from contingencies account' shall be omitted.

(iii) For the heading 'Profit made on sale of investments, gold and silver, land, premises and other assets' the heading 'Net profit on sale of investments, gold and silver, land, premises and other assets (not credited to Reserves or any particular Fund or Account)' shall be substituted.

(iv) For the heading 'Profits made on revaluation of investments gold and silver, land, premises and other assets' the heading 'Net profit on revaluation of investments, gold and silver, land, premises and other assets (not credited to Reserves or any particular Fund or Account)' shall be substituted.

(b) *Expenditure side*.—(i) For the heading 'Interest paid on deposits' the following shall be substituted, namely,

'Interest paid on deposits, borrowings, etc.'

(ii) The headings 'Salaries and Allowances (showing separately salaries and allowances to managing director or manager)' and 'Provident Fund' shall be combined together as under:

"Salaries and Allowances and Provident Fund (showing separately salaries and allowances to managing director, manager or chief executive officer)"

(iii) The headings "Directors' Fees and allowances" and "Local Committee members' fees and allowances" shall be combined together as under:

"Directors' and Local Committee Members' fees and allowances".

(iv) The headings "Depreciation on Bank's Property" and "Repairs to Bank's Property" shall be combined together as under:

"Depreciation on and repairs to the banking company's property".

(c) The following foot-note to the Form shall be added, namely,

"* Net loss on sale or revaluation of investments, gold and silver, land, premises and other assets, if any, may be deducted from income".

III. Notes appended to Form A.—(i) Note (b) of the Notes appended to the Form shall be omitted.

(ii) For the existing note (c) of the Notes appended to the Form, the following shall be substituted:

"(c) Under this heading may be included such items as the following: pension or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities."

(iii) For the word "bank" occurring in item (ii) of note (d) to the Notes appended to the form of Balance Sheet, the words "banking company" shall be substituted.

(iv) Note (e) of the Notes appended to the Form shall be omitted.

(v) After the existing note (f) in the notes appended to the Form the following new note shall be inserted, namely,

"(ff) maximum total outstanding balance in all such accounts as a unit on any day during the year should be given under this heading".

(vi) For the words "Bank premises wholly or partly occupied" occurring in note (g) to the Notes appended to the form of Balance Sheet the words "Premises wholly or partly occupied by the banking company" shall be substituted.

(vii) For the existing note (i) of the Notes appended to the Form the following shall be substituted:

"(i) Value shown shall not exceed the market value and in cases where the market value is not ascertainable, the estimated realisable value",

(viii) (c) The foot-note to the Notes appended to the Form shall be omitted.

IV. All the headings in Form A and in Form B as amended above shall be numbered.

[No. 4(147)FI/51.]

S. K. SEN, Dy. Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)

CENTRAL EXCISES

New Delhi, the 8th September 1951

S.R.O. 1385.—In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Finance (Revenue Division), No. 12-Central Excises, dated the 7th April 1951, namely:—

In the said notification, for the word "one-eighth", the word "one-fifth" shall be substituted.

[No. 28]

D. P. ANAND, Dy. Secy.

HEADQUARTERS ESTABLISHMENTS

New Delhi, the 5th September 1951

S.R.O. 1386.—In pursuance of clause (b) of sub-rule (ii) of rule 2 of the Appellate Tribunal Rules, 1948, the Central Government is pleased to appoint Mr. K. V. Rao, Income-tax Officer, as Authorised Representative to appear, plead and act for an Income-tax Authority who is party to any proceeding before the Income-tax Appellate Tribunal.

[No. 47.]

S. P. LAHIRI, Dy. Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 6th September, 1951.

S.R.O. 1387.—In exercise of the powers conferred by sub-section (1) of section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue direct that the following further amendment shall be made in the Indian Income-tax Rules, 1922, the same having been previously published as required by sub-section (4) of the said section, namely:—

In the statement in rule 8 of the said Rules, under the heading "Class of Asset" "III Machinery and Plant", in group 2(C) and sub-heading (i) after the word "Rubber" the words "and plastic" shall be inserted.

[No. 89.]

S. P. LAHIRI, Secy.
Central Board of Revenue.

MINISTRY OF COMMERCE AND INDUSTRY

RUBBER CONTROL

New Delhi, the 5th September 1951

S.R.O.1388.—The following statement of accounts of the Indian Rubber Board for the year ended 31st December, 1950, is published in pursuance of sub-rule (2) of Rule 26 of the Rubber (Production and Marketing) Rule, 1947.

THE INDIAN RUBBER BOARD

Receipts and Payments Account for the year ended 31st December 1950.

Receipts	Rs. A. P.	Rs. A. P.	Payments	Rs. A. P.	Rs. A. P.
To Balance as on 1st January 1950.			By Office Rent		3,000 0 0
With Imperial Bank of India, Cochin—			“ Officer's Salaries and Establishment		
On Fixed Deposit Account—			Charges—		
General Fund	80,107 13 0		Salaries	42,935 15 7	
Scientific Research Fund	40,408 9 0	1,20,516 6 0	Dearness Allowance	15,416 9 0	
On Current Account	16,699 0 0		Specal Allowance	1,005 0 5	
With Central Bank of India Ltd., Kottayam on current account	3,141 11 8		Deputat on Allowance	2,808 7 2	
Cash on hand	40 4 6		Charge Allowance	1,301 11 6	63,467 11 8
Stamps on hand	16 11 11	1,40,414 2 1	.. Travelling and Daily Allowances		22,123 0 0
The Indian Rubber Board Provident Fund—			.. Stationery and Printing		3,503 17 1
Investments at Cost—			.. Postage and Telegrams		6,470 4 1
Rs. 5,800 3 percent. 1951-54			.. Research and Propaganda—		
Govt. of India					
Loan	5,922 4 0		Scientific Research Fund Expenses	750 0 0	
Rs. 3,700 3 per cent 1970-75			Latex Testing Equipment	896 4 6	
Govt. of India			Rubber Leaflets	1,581 12 0	
First Development			Smoke House	25 0 0	
Loan	3,705 14 0	9,628 2 0	Nursery	4,692 9 5	7,925 9 11
Amount with Imperial Bank of India, Cochin on Current Account	2,797 15 10	12,426 1 10	.. Miscellaneous—		
			Purchase of furniture		1,737 13 6

<i>Receipts.—Contd.</i>	Rs.	A.	P.	Rs.	A.	P.	<i>Payments.—Contd.</i>	Rs.	A.	P.	Rs.	A.	P.
To Excise Duty				1,38,615	2	8	Sundry Expenses				3,826	9	6
" Fees on Account of—							Advertisement				2,32	13	0
Manufacturers' Licence	1,893	4	0				Books and Periodicals				492	7	3
Dealers' Licence	22,600	0	0				Discount on Cheques				268	11	0
New Planting Licence	46	0	0				Audt Fee				1,149	12	0
Replanting Licence	29	0	0	24,568	4	0	Law Charges				602	8	0
, Interest on Fixed Deposit Account—							Medical Expenditure				91	2	9
General Fund	1,201	0	9				Marketing Organisation				3,637	11	11
Scientific Research fund	606	2	0	1,807	11	9	Contribution to Leave salary of Officers—						
, Miscellaneous—							" Collection of Payments for services rendered"				1,046	14	0
Amount received from Staff for payment of Income tax	1,624	2	0				Contribution for Pensions—				211	3	8
Advertisements in Rubber Leaflets	275	0	0				" Receipts in aid of Superannuation"						
Nursery	2,476	13	6				Contribution to the Indian Rubber Board Provident Fund				2,251	10	0
Amount received from staff for payment of General Provident Fund	100	0	0				Staff Income-tax				3,418	14	10
Amount recovered from Staff for payment of Post-in Insurance	41	4	0				Payment on account of staff to General Provident Fund				100	0	0
Sale of Old Cycle	58	0	0				Payment on account of staff to Postal Insurance				41	4	0
Sundry Payments recovered	274	14	7				Refund of Income-tax				3	12	0
Sundry Advances recovered	438	12	9				Sundry Payments recoverable				279	0	7
Sundry Receipts refundable	380	13	6				Sundry Receipts refunded				807	8	3
Sundry Receipts	69	9	3	5,722	5	7	Payments of Outstanding Expenses—				119	6	3
To the Indian Rubber Board Provident Fund—							Salaries, Dearness and Special allowances for the year 1949				20,619	3	3
Subscription by Members	3,414	4	0				By the Indian Rubber Board Provident Fund—						
Contribution by the Indian Rubber Board	2,251	10	0				Interest paid on purchase of Govt. Securities and Loss on Sale of Securities				101	1	7
Interest on Government securities	865	0	0				Provident Fund Advance				40	0	0
							Bank Charges				49	3	0
											100	4	7

Amount received on loan to staff	10 0 0
Interest on loan to Staff	10 13 0

6,111 11 0

By Balance as on 31st December 1950—

With Imperial Bank of India, Cochin—

On Fixed Deposit Account—

General Fund	80,107 13 0
Scientific Research	86,014 11 0
Fund.	1,66,122 8 0

On Current Account

With Central Bank of India Ltd.,	16,850 1 7
Kottayam on Current A/c	839 5 6

Cash on hand

Stamps on hand	189 2 2
	17 4 10

1,84,018 6 1

The Indian Rubber Board Provident

Fund—

Investments at Cost—

Rs 6,400 3 per cent 1970—75 Govt. of India First De- velopment Loan	6,412 10 0
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Rs 8,000 3 per cent.

Govt. of India

1986 Loan	8,173 2 0
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Amount with Im-

perial Bank of

India, Cochin on

Current Act.	3,761 12 3
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18,347 8 3 2,02,365 14 4

3,29,665 6 11

3,29,665 6 11

MADRAS
24th July, 1951

We have examined the foregoing Receipts and Payments Account in accordance with Section 24 Clause (2) of the Rubber (Production and Marketing) Act, 1947, we beg to report that in our opinion, the payments made as shown thereon have been expended in pursuance of the purposes of the Act.

(Sd.) FRASER and Ross
Chartered Accountants

V. C. NAIDU, Secy.
Indian Rubber Boa d.

[No. 25(1)-Plant/51.]

K. P. SIRCAR Under Secy.

New Delhi, the 15th September, 1951

S.R.O. 1389.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the following further amendment shall be made in the Cotton Textiles (Control) Order, 1948, namely:—

In paragraph (d) of sub-clause (3) of clause 21 of the said Order—

- (a) in sub-paragraph (iii), for the words and figure "March 1951 and in every subsequent month" the words and figure "March, April, May, June, July and August, 1951" shall be substituted.
- (b) after sub-paragraph (iv) the following sub-paragraph shall be added namely:—
- "(v) During September 1951 and every subsequent month a quantity of yarn intended for sale in India less than 87½ percent. of the total quantity of yarn packed by him in the same month; provided, however, that out of the balance the quantity of yarn packed of any particular count shall not be more than 20 percent. of the total quantity of yarn of the same count packed by him in that month."

[No. 9(4)-CT/51-9].

S. K. DATTA, Dy. Secy.

MINISTRY OF FOOD AND AGRICULTURE

AGRICULTURE

New Delhi, the 5th September, 1951

S.R.O. 1390.—Under Section 4 (ix) of the Indian Cotton Cess Act, 1923 (XIV of 1923) the Hyderabad Government have nominated Shri P. D. Nair, Director of Agriculture, Hyderabad to represent that Government on the India Central Cotton Committee with effect from the 1st April 1951.

[No. F.I-8/51-CJ.]

J. V. A. NEHEMIAH, Dy. Secy.

New Delhi, the 5th September, 1951

S.R.O. 1391.—In exercise of the powers conferred by Clause 11 of the Sugar and Gur Control Order, 1950, the Central Government is pleased to direct that the following further amendment shall be made to the late Ministry of Agriculture Notification No. S.R.O. 792-A, dated the 19th October 1950:—

In "The Schedule" to the said Notification—

Against item "4. Madhya Pradesh", under column (2)—

For "(ii) All District Magistrates"

Read "(ii) All District Magistrates and Additional District Magistrates".

[No.SV-105(3)/50-51.]

P. A. GOPALAKRISHNAN, Joint Secy

New Delhi, the 7th September, 1951

S.R.O. 1392.—*Corrigendum.*—In the Bristles Grading and Marking Rules, 1951, published with the notification of the Government of India in the Ministry of Food and Agriculture, No. S.R.O. 716(F.4-5/50-Marketing), dated the 8th May 1951, published in the *Gazette of India*, Part II, Section 3, dated the 19th May, 1951, the following corrections shall be made, namely:—

- (1) In clause (iii) of rule 6 for the words 'carton and tin' substitute the words 'carton or tin'.
- (2) The word 'Draft' occurring in the headings of each of the Schedules I to IX shall be omitted.
- (3) For the words 'Grade' in lines 4, 5 and 'designation' in the footnote to Schedule I substitute the words 'grades' and 'designations', respectively.
- (4) For the figures '6½%', '12½%' and '2½' in lines 5, 6 and 14 substitute the figures '6½%', '12½%' and '2½' respectively in the footnote to Schedule II.
- (5) For the figure '6½' in column 3 of Schedule III substitute the figure '6½'.
- (6) For the figures "60½" in lines 3 and 10 of the footnote to Schedule IV substitute the figure "6½".
- (7) Omit the Urdu version of the term "Produce of India" in Schedule X.

[No. F.4-5/50-Mkt.]

S.R.O. 1393.—In exercise of the powers conferred by Section 3 of the Agricultural Produce (Grading and Marking) Act, 1937 (I of 1937), the Central Government hereby directs that the following further amendments shall be made in the Ghee Grading and Marking Rules, 1938, the same having been previously published as required by the said Section, namely:—

In the said Rules—

- (1) In rule 3 for the words and figures "Columns 1 to 5" the words "Columns 1 to 3" shall be substituted.
- (2) In Schedule I the footnote against the mark + shall be omitted.
- (3) In Schedule III, columns 2 and 3 and the entries relating thereto shall be omitted and columns 4 and 5 shall be renumbered as columns 2 and 3, respectively.

[No. F.4-6/51-Dte.II.]

A. G. MENON, Dy. Secy.

New Delhi, the 10th September 1951

S.R.O. 1394.—Under Section 4 (ix) of the Indian Cotton Cess Act, 1923 (XIV of 1923), the Government of Patiala and East Punjab States Union have nominated Dr. Gursham Singh, officiating Director of Agriculture, PEPSU to represent that Government on the Indian Central Cotton Committee with effect from the 1st April, 1951.

[No. F.1-8/51-C.J.]

New Delhi, the 7th September, 1951

S. R. O. 135.—In pursuance of the provisions of Rule 13 (4) of the Indian Cotton Cess Rules, 1923 framed under Section 15 of the Indian Cotton Cess Act, 1923 (XIV of 1923) the Central Government are pleased to publish the following statement of Receipts and expenditure of the Indian Central Cotton Committee for the year 1950-51.

INDIAN CENTRAL COTTON COMMITTEE

Statement of Receipts and Payments for the year ended 31st March, 1951

	Rs.	's.	Rs.	Rs.		
Opening Balance as on 1st April, 1950.	40,23,417	5 6				
Sinking Fund	30,849	6 0	40,54,266	11 6		
Less.—Adjustment of Suspense Receipts during 1949-50.			4,707	14 6		
Receipts under Section 12 of the Indian Cotton Cess Act 1923.			40,49,558	13 0		
Other Receipts :—						
Sale of Publications Sale of Cotton Miscellaneous Receipts Test fees, etc.	28,089	14 9				
Rent recoveries from Director, Technological Laboratory, Matunga.	1,787	13 0				
Suspense Receipts	868	6 0				
Sinking Fund provision for 1950-51.	2,415	0 0	33,161	1 9		
				Administration of the Committee :—		
				(Including improvement of Cotton Marketing, Printing, Publicity and Distribution and Travelling Allowance of Non-official Members).		
				3,00,122	11 5	
				Agricultural Research Grants-in-Aid :—		
				(Including Research, Seed, Marketing and Miscellaneous Schemes).		
				8,12,127	4 1	
				Technological Research.	3,41,546	6 10
				Closing Balance	56,11,777	11 6

<i>Interest on Investments</i>	<i>1,32,713 15 10</i>		
<i>Less.—Loss on conversion of 2.1/2% Govt. of India Loan 1950 of the Face Value of Rs. 8,00,000.</i>	<i>11,500 0 0</i>	<i>1,21,215 15 10</i>	<i>1,54,377 1 7</i>
<i>Amount received from the Cotton Fund at the disposal of the Govt. of India.</i>		<i>21,18,308 13 9</i>	
Total		70,65,574 1 10	Total

We have examined the above statement of Receipts and Payments of Indian Central Cotton Committee with the Books, Vouchers and Certified Returns of the Committee, have obtained all the information and explanations we have required and certify that to the best of our information and explanations received, the above statement is a correct abstract of the figures appearing in the books and is drawn up in conformity with the rules under the Indian Cotton Cess Act, 1923.

Bombay, 10th July, 1951.

(Sd.) S. B. BILLIMORIA and Company
Chartered Accountants, Auditors.

[No. F. 1-54/51-CJ.]

S. R. MAINI, Dy. Secy.

MINISTRY OF COMMUNICATIONS

New Delhi, the 5th September 1951

S.R.O. 1396.—The following draft of certain amendments to the Indian Aircraft Rules, 1937, which it is proposed to make in exercise of the powers conferred by section 5 of the Indian Aircraft Act, 1934 (XXII of 1934), is published as required by section 14 of the said Act, for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 15th December, 1951. Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendments

In the said rules—

- I. In sub-rule (1) of rule 3, after the definition of the expression "course", the following definition shall be inserted, namely:—
 'dangerous goods' means any goods, whether explosives or not, which by reason of their nature are likely to endanger the safety of aircraft or persons or things on board the aircraft.

- II. For rule 8, the following rule shall be substituted, namely:—

"8. Carriage of arms, explosives or dangerous goods—

- (1) Save as otherwise provided in this rule, no person shall carry or cause or permit to be carried, in any aircraft to, from, within or over India any munitions of war, implements of war, explosives, articles of a highly inflammable nature, arms, ammunition, military stores, oxidizing material, corrosive substance, compressed gas, tear gas, radio-active materials, poisonous substance or other dangerous goods.
- (2) Notwithstanding anything contained in sub-rule (1), the following classes of goods may, subject to the provisions of sub-rules (3) and (4), be carried in any aircraft, namely:—
- (a) such explosives or other articles as are required on board for the purpose of the operation, navigation or safety of the aircraft;
 - (b) subject to the provisions of the Indian Arms Act, 1878, and the rules made thereunder such arms and ammunition as may reasonably be required for the private use of any person, either as personal luggage or as freight; and
 - (c) any other goods the carriage of which by air is authorized in writing by the Central Government.
- (3) Where the carriage of any goods is permitted by or under sub-rule (2) it shall be the duty of the pilot, of the consignor and of every person concerned with the booking, handling or carriage of such goods to ensure—
- (a) that the goods are so packed, protected and secured as to avoid the possibility of their being a source of danger to the aircraft or to persons or things carried therein,
 - (b) that the goods are carried in a receptacle not accessible to the passengers on the aircraft, and
 - (c) that the nature of the goods is plainly and conspicuously marked on the outside of the package containing them.
- (4) The consignor of any goods which are, or appear to be, of the kind specified in sub-rule (2) shall give the air carrier a written notice specifying the nature, weight and quantity of the goods and the name and full address of the consignor, and the carrier shall inform the pilot or person in charge of the aircraft of all such particulars before the goods are placed on board the aircraft.

- (5) Where any officer authorized in this behalf by the Central Government has reason to believe that the provisions of this rule are, or are about to be, contravened he may cause the goods in question to be removed from the aircraft and placed under his custody pending detailed examination of the nature of the goods or pending a decision regarding the action, if any, to be taken in the matter."

[No. 10-A/8-50.]

P. K. ROY, Dy. Secy.

POSTS AND TELEGRAPHS

New Delhi, the 15th September, 1951

S.R.O. 1397.—In exercise of the powers conferred by section 7 of the Indian Telegraph Act, 1885 (XIII of 1885), the Central Government hereby directs that the following further amendment shall be made in the Indian Telegraph Rules, 1932, namely:—

For clause (1) of rule 459 of the said Rules, the following rule shall be substituted, namely:—

"(1) The charges payable for the use of a trunk line for each single period between any two exchanges belonging to the Indian Posts and Telegraphs Department shall be fixed on the radial distance basis as follows and calculated to the nearest anna—

For the first 100 miles	4.8 annas for each 12½ miles or part thereof.
For the next 250 miles after the first 100 miles.	3.2 annas for each 12½ miles or part thereof.
For the next 150 miles after the first 350 miles.	4 annas for each 25 miles or part thereof.
For any radial distance after the first 500 miles.	6 annas for each 50 miles or part thereof.

Provided that the charge for a trunk call of a unit duration excluding incidental charges such as those for particular person and fixed time calls shall not exceed Rs. 12.

Provided further that the Director General may prescribe a charge for the use of the line between any two exchanges, the radial distance between which does not exceed 20 miles, at a rate lower than the rate prescribed above subject to the condition that the facilities provided in rules 444 and 445 shall not be available in such cases."

[No. R-3-89/50.]

K. V. VENKATACHALAM, Dy. Secy.

MINISTRY OF TRANSPORT

MERCHANT SHIPPING

New Delhi, the 10th September 1951

S.R.O. 1398.—In exercise of the powers conferred by sub-section (3) of section 26A of the Indian Merchant Shipping Act, 1923 (XXI of 1923), the Central Government hereby directs that the following amendment shall be made in the Indian Merchant Shipping (Medical Examination) Rules, 1951, namely:—

In the said Rules, after rule 14, the following shall be inserted, namely:—

"14-A. *Temporary provision in case of overaged seamen.*—Notwithstanding the provisions of clause (2) of Appendix A, seamen who are over

60 years of age but not over 65 years of age and are considered to be specially competent by the Shipping Master may be engaged at any time before the 1st September 1952, for one further voyage provided they are certified as physically fit by the Medical Authority."

[No. 139-M.S(1)/51.]

H. C. SARIN, Dy. Secy:

MINISTRY OF RAILWAYS
(Railway Board)

New Delhi, the 7th September, 1951

S.R.O. 1399.—In exercise of the powers conferred by Rule 1 of Order XXVI of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), read with Section 141 of the said Code, the Central Government hereby authorises the General Manager and the Deputy General Manager of the Southern Railway to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

[No. E51LL2/14/3.]

P. N. SAXENA, Director,
Establishment, Railway Board

MINISTRY OF WORKS, PRODUCTION & SUPPLY

New Delhi, the 6th September 1951

S.R.O. 1400.—In exercise of the powers conferred by Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the following amendments shall be made in the Collier Control Order, 1945, namely:—

In the said Order—

(a) for sub-clause (2) of clause 1 the following sub-clause shall be substituted, namely:—

'(2) It extends to the whole of India except the States of Jammu and Kashmir and Hyderabad',

(b) after clause 15 the following clause shall be inserted, namely:—

'(16) If in any area to which this Order did not extend, immediately before the 15th day of September 1951, there is in force any order corresponding to this Order, such corresponding Order is hereby repealed: Provided that all appointments made, licences or permits granted, and directions or notifications issued, under an such corresponding Order and in force immediately before the said date shall be deemed to be made, granted or issued under this Order as amended from time to time, and shall continue in force accordingly.'

[No. 18-CI(10)/51.]

U. L. GOSWAMI, Dy. Secy:

MINISTRY OF LABOUR

New Delhi, the 28th August 1951

S.R.O. 1401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Calcutta, in respect of the industrial disputes between banking companies and their workmen in the State of Uttar Pradesh:—

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, GURUSADAY ROAD, BALLYGUNGE, CALCUTTA-19.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

AWARD

Bank Disputes in the State of Uttar Pradesh.

By Notification No. LR-2(273), dated the 21st February 1950, the Central Government referred to this Tribunal for adjudication the industrial disputes that had arisen after 13th June 1949 or were apprehended between the employees of the Banks, specified in Schedule I of the said Notification and their Employers, in respect of matters specified in Schedule II thereof.

Notices were issued to the Banks—

- (1) directing them to give due publicity to the Notification among their employees;
- (2) directing the employees to file statements of claim in the office of the Tribunal by 15th March 1950 and to furnish copies thereof to the employers on the same day;
- (3) directing the Banks to file their written statements within ten days thereof, with copy to the employees; and
- (4) directing the Banks to report for record to this Tribunal as to the manner in which due intimation had been given to the employees.

Notices were also issued to the Bank Employees' Unions to file their statements of claim.

Statements of claims were received from the employees of different Banks—from Head Offices as well as branch offices—and also from the Unions and Written Statements were duly filed by the Banks concerned.

The hearing of disputes emanating from the State of Uttar Pradesh according to the schedule programme was to come up in the first week of April 1951 for which correspondence ensued with the Uttar Pradesh Government for the allotment of accommodation as early as in March 1951. The intimation, however, was received on the 30th March 1951 and notices were duly issued to the parties on the 3rd of April for first sitting at Kanpur from 17th April onward. As the number of cases emanating from Uttar Pradesh State was so large that it could not possibly be finished in one month, sittings were held at Kanpur, Dehra Dun and Naini Tal regard being had as far as possible to the nearness of the place from where the majority of the causes had arisen; and as such the sittings for the hearing of Uttar Pradesh cases extended over the months of April, May and June 1951. The representatives of Central Bank of India, National Bank of India, Allahabad Bank, Punjab National Bank, United Commercial Bank, Ilabib Bank, Bank of Bihar, Bank of Bikaner and Bharat Bank, attended the proceedings at Kanpur from 17th to 24th April 1951.

Unhappily it so transpired that the representatives of U.P. Bank Employees Union despite repeated directions and personal advice on their approach did not see their way to participate in the proceedings. The Union in the first instance asked for an adjournment of two days for the preparation of the cases on the plea that they had been busy otherwise and could not prepare. This was granted but ultimately the Union decided not to participate in the proceedings and the cases according to the Cause List relating to the Banks mentioned above excepting a few

cases of Bharat Bank were heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The U.P. Bank Employees Union, however, in the next sitting at Dehra Dun, where the representatives of the Employees Union made their appearance applied for the re-hearing of the cases already heard at Kanpur in their absence. Notice was issued to all the Banks concerned on this application and on the appreciation of their written replies as well as arguments made in Court, it was decided that re-hearing could not be allowed for want of just and sufficient cause as well as for want of jurisdiction. In this connection three interlocutory orders were passed two at Kanpur and the final one at Nauni Tal whereby the application for re-hearing was dismissed; and in one sense I do not think that it would be obligatory upon the Tribunal to make those interlocutory orders a part of this award. But I think it would be proper as well as more fair in the interest of natural justice to incorporate those orders in the award itself in or order to enable the aggrieved party to seek redress if it is legally open to them from any higher authority if so desired.

The same are reproduced as under:—

(1) ORDER PASSED ON THE LETTER DATED 17TH APRIL 1951 RECEIVED FROM THE U.P. BANK EMPLOYEES UNION, KANPUR FOR POSTPONEMENT OF HEARING FOR TWO DAYS FOR PREPARATION.

ORDER

17-4-51. The Union's recognised representatives have not chosen to attend. In this connection it was brought to my notice by the office that the U.P. Bank Employees' Union have decided not to participate in the proceedings and a misleading statement has appeared in a local newspaper to that effect. It is with great regret that I have to take notice of it and to place on record a detailed order in this respect.

Appropos the general circular of September 1950 fixing tentative dates in all cases emanating from various States all over India about 800 in number, notices were sent to all the Banks and also the Employees Unions and individuals who had preferred their claims. The work straightforwardly started from the 1st week of October and Uttar Pradesh in that circular was placed in December 1950 but it so transpired that after hearing the cases of Delhi and Punjab States, the work accumulated and it became difficult to take up the U.P. Bank disputes. Some West Bengal cases which were held over previously by my learned predecessor and General Assurance Company Reference were also to be heard in December. The pleadings in U.P. Bank cases, moreover, had not completed and new claims and written statements were still being received and thus it became absolutely necessary to postpone the hearing of U.P. cases, which was therefore fixed in April 1951 by circular No. 3-C(3)50, dated 13th November 1950.

The scheduled programme went on happily and by this time Delhi, Punjab, Bombay, Madhya Pradesh, Madras and Bihar, so far Bank disputes are concerned, have been disposed of even by sending the awards, besides the disposal of two other References of Insurance Companies and the hold over cases of West Bengal.

The hearing of U.P. Bank disputes as scheduled had to start in April after having arranged with the U.P. Government in regard to accommodation for which steps were taken as early as in the 1st week of March 1951. Notices were, however, issued on the 3rd April to the parties under registered cover after hearing from U.P. Government about allotment of accommodation. Earlier some letters were received by the U.P. Bank Employees Union, Kanpur, as well as from the individuals in March 1951 as to why notices were not being issued and the persons concerned were duly informed that intimation will be given when the Tribunal hears from the State Government regarding the accommodation allotted for the purpose.

It was on the 7th April 1951 that a telegram was received suddenly purporting to have been sent by the Kanpur Employees Union asking for postponement of the hearing in April as the Union had decided to resort to direct action from 19th April on various issues. The sender's name was not given in the telegram and normally it should have been filed but in order to avoid any doubt and uncertainty it was deemed proper to send a communication to the U.P. Bank Employees Union on the same day i.e. on the 7th April 1951 wherein they were informed that postponement was not possible and that the case would be heard as fixed at Kanpur. Another telegram was received by the office on the 12th and a similar request was made on the same ground that the Bank Employees Union had declared general

strike from the 23rd April and that the hearing be postponed. Telegraphic information was given on the same day wherein it was made clear that the Tribunal could not justifiably take legal notice of the strike and as such it was impossible for the Tribunal to postpone the hearing on this ground which would rather mean that the Tribunal was agreeing with their action. It appears that the drift and the meaning was not appreciated and the Bank Employees Union, Kanpur, persisted in that attitude for postponement of the hearing on 17th April (to-day) although they contemplate some action on the 23rd. In my anxiety to have the advantage of the Union representatives and to avoid any fuss over the matter a detailed letter No. 3-C(3)50-103, dated 12th April 1951 was also sent wherein the position was further fully explained to the Union and it was expected that they would feel responsible to conduct the cases of all those whom they represent and despite their engagement they would decide to spare one man to attend to this judicial work which was to start on the 17th at 10 A.M. at the Circuit House, Kanpur.

On my arrival here one of the Secretaries of the Union rang me up and sought an interview. Although it is not the practice of this Tribunal to allow interview to parties yet I departed from that practice in order to meet the situation which I discerned was taking wrong turn. I, therefore, agreed to meet the office bearers of the Union and again explained to them the implications and told them that if any one of the cases was found difficult or lengthy they would be accommodated.

To-day when the third case which was to be represented by the U.P. Bank Employees Union, Kanpur, came up for hearing, Shri V. N. Sekhri, the Secretary of the Union, made his appearance and filed an application wherein request has been made to postpone the hearing for two days to enable the Union for preparation. It is unfortunate that the significance and the implications of the first approach to the Tribunal on the ground of strike and direct action were not duly realized by the Union but that aspect of the question will be considered in due course as to what action can be taken and against whom. At present in regard to the fresh application of to-day my practice has been to await the attendance of parties whenever it is possible and some cases were actually heard afresh on calling upon the Bank representatives to make their appearance once again (for which I would take this opportunity to say that the Bank representative never demurred to attend again and again for fresh hearing in the interest of the defaulting employer). I would like to adhere to the same line even now and the Union representative Shri Sekhri was made to understand that he should attend as early as possible by to-morrow or say day after and meanwhile if any case is heard *in absentia* the same will be heard again for which the Bank representative will be given due notice to appear whenever required during my nine days stay at Kanpur, of course not later than 24th of April.

K. C. CAMPBELL-PURI, Chairman.

(2) ORDER PASSED ON THE LETTER DATED 20TH APRIL 1951 RECEIVED FROM THE U.P. BANK EMPLOYEES UNION, KANPUR, FOR POSTPONEMENT OF HEARING OF THE BANK DISPUTES EMANATED FROM U.P. STATE.

ORDER

20-4-51.—This case came up for hearing on the very first day, i.e. on the 17th April 1951. The hearing, however, was adjourned on the application of the General Secretary, U.P. Bank Employees Union, Kanpur, through Shri V. N. Sekhri, whereby the Union had asked for two days adjournment on the plea that the Union had been busy otherwise and could not prepare the cases. I had certain misgivings about this plea in view of the Note published on the same morning yet in the interest of smooth work and the promotion of social justice; the hearing in cases filed by this Union was adjourned for two days and a detailed order was made in the presence of the Secretary of the Union in open Court and he was made to understand that if any complaint filed through U.P. Bank Employees Union, Kanpur, was at all heard within these two days it will be re-heard on the appearance of the Union representative. It was, therefore, hoped that the Union would come forward to prosecute the claims preferred by them and thus safeguard the interests of those who entrusted their cases to them. But it is deplorable that no one has made his appearance to-day on behalf of the Union and intimation has been received that they have decided not to participate in the proceedings as general strike has been called for on the 23rd April 1951. The same plea of strike accordingly has again been advanced after having once asked for adjournment on the plea of preparation. Without incurring the risk of repetition I would only

say this time that no Court could stultify itself to postpone the hearing of judicial work on the plea that a party was launching direct action against the other party or the Government. It is rather contumacious for anybody to ask a judicial Tribunal to be a party to the motion which attracts the penalty contemplated under the provisions of Section 22 of the Industrial Disputes Act. And the other sadden aspect of the resolution, in not participating in the proceedings and giving publicity to it in press to lionize themselves, is that the Tribunal as an itinerary has been travelling from place to place at much personal discomfort and great strain for the accommodation and convenience of these employees and their Unions, otherwise the employers can very well be called upon to come to the Headquarters for the adjudication of claims.

Accordingly the work of the Tribunal must proceed and in this respect normally the one course open to the Tribunal keeping in view the conduct of the Union as well as the attendance of about two dozen representatives of no less than one dozen Banks from other States including Bombay and Calcutta, is to file all complaints and claims in default for want of prosecution. The other course is to resort to the provisions of Rule 19 of the Industrial Disputes (Central) Rules wherein it lies in the discretion of the presiding officer to hear the cases *in absentia* if good cause is shown for absence. I need hardly add that good cause is not shown but still in the interest of natural justice and to safeguard the rights of those employees who confided their cases in the care of the Union and for default of their appearance are now likely to suffer, I would adopt the latter course. The result is that all these claims preferred by the U.P. Bank Employees Union will be heard *in absentia* under the Provisions of Rule 19 of the Industrial Disputes (Central) Rules, 1947 and the Tribunal shall proceed as if the party had duly attended or had been represented. Order accordingly.

K. S. CAMPBELL-PURI, Chairman.

(3) APPLICATION OF THE U.P. BANK EMPLOYEES UNION THROUGH THEIR PROVINCIAL JOINT SECRETARY SHRI A. C. KAKKAR DATED 8TH MAY 1951 FOR THE RE-HEARING OF CASES EMANATING FROM THE STATE OF UTTAR PRADESH HEARD AT KANPUR FROM 17TH TO 24TH APRIL 1951.

ORDER

The essential facts and attending circumstances which led to the filing of this application dated 8th May 1951 for re-hearing of the cases emanating from the State of Uttar Pradesh heard at Kannur from 17th April to 25th April, have already been set forth in my orders dated 17th and 20th April 1951 and need not be recapitulated here. Of course the aforesaid two orders passed on the applications of U.P. Bank Employers Union at Kanpur shall form a part of this order in order to understand the background of this move for the re-hearing of the cases. The plea advanced in the application mainly is that the U.P. Bank Employees Union representatives, through whom a large number of claims were filed on behalf of the employees, were helpless to participate in the sittings at Kannur due to the general strike conducted by them in those days. The Provincial Joint Secretary of the Union after obtaining the copies of the previous orders passed in this connection at Kanpur filed written arguments on 16th May 1951 and also addressed the Tribunal orally explaining their helplessness during the period of sitting at Kanpur viz. from 17th to 25th April 1951. In the course of arguments attempt was made to explain the difficulties and the circumstances under which the Union was compelled not to participate in the Kanpur sitting with a nose as if it was no concern of theirs, as to how much the other party suffered due to their conduct and action. It was stated that they required several persons for the prosecution of their cases and in point of fact their general council had appointed a committee to conduct the cases but on account of strike they could not devote one or two persons to meet the needful. In regard to the move made in the first instance by the General Secretary requesting adjournment for two days on the ground of preparation which was granted but was not availed of; it was stated that subsequently the General Council on consideration of the whole situation arising on the call of strike did not approve of participating in the proceedings. It was also stated that if they had known that the hearing was to take place from 17th before when they had decided to go on strike, they would have postponed the date.

On hearing the Provincial Joint Secretary, notice was sent to all the Banks concerned, whose representatives about two dozen in number had made appearance at Kanpur, by my order dated 24th May 1951. Some time was spent in having replies from all the Banks concerned and the latest reply was received here on

11th June 1951 in the course of the third sitting at Naini Tal. Almost all the Banks vehemently opposed the Union's request for re-hearing of the cases and their replies may be summarised as under for facility of reference:—

- (1) *Bharat Bank*.—That the cases at Kanpur were properly heard by the Tribunal under Rule 19 of the Industrial Disputes (Central) Rules. The representative of employees did not participate without any good cause and that there was no justification for re-hearing.
- (2) *United Commercial Bank*.—That the Bank had serious objection to the re-hearing of the cases and inspite of the efforts made by the Chairman to ensure their participation they boycotted the Tribunal's proceedings. It was untrue that they were unable to take part and if the request be allowed, it will not only result in unnecessary waste of time and money but also encourage the Union to adopt similar tactics and will tend to lower the authority and prestige of the Tribunal besides hampering the work of the Tribunal.
- (3) *National Bank of India*.—That they had no objection provided the hearing is held at Kanpur; but it is pointed out that the strike did not commence until 23rd April whereas the proceedings commenced on 19th in their case and hence there was no good cause.
- (4) *Punjab National Bank*.—That the cases were heard under Rule 19 of the Industrial Disputes (Central) Rules and as the absence of the Union representative was deliberate and wilful there was no justification for re-hearing the cases. That the Tribunal had no jurisdiction to re-hear those cases under any provision of the Act or any rules made thereunder. That according to the provisions of Civil Procedure Code also, the Tribunal has no power to set aside, these proceedings. That this Bank had 42 cases and incurred heavy expense, considerable labour and time and as such there is no justification to put the Bank once again to expense and trouble.
- (5) *Allahabad Bank*.—That the Union had ample notice of the hearing and adequate time for making arrangement for proper representation irrespective of the strike which commenced on the 23rd and that there was no justification for re-hearing.
- (6) *Central Bank of India*.—The Bank opposed the application and raised several objections in a long detailed reply. The sum and substance of this is that the Union had sufficient time and their absence was deliberate and wilful. The strike commenced on 23rd and there was nothing to prevent the representatives to be present on 17th to 20th when the cases were actually heard. The Union according to the resolution of the strike committee (published in newspapers) took their decision on the 16th not to participate on the proceedings and it was incorrect to say that they were not aware of the hearing to take place at Kanpur. The Bank had incurred heavy expenses by calling all the representatives of branch offices concerned as well as their legal adviser, who had to remain at Kanpur for several days whereby the working of branches were unduly disturbed. That the Tribunal could have well dismissed the complaints but the Tribunal was pleased to consider all the points raised in the complaints and written statement in the eve of justice and in these circumstances there was absolutely no justification for re-hearing and to call upon the Bank unnecessarily to undergo expenses incidental to the defence. The request of re-hearing would amount to abuse of the process of law.
- (7) *Bank of Bikaner*.—That the default of the Employees Union was wilful and they cannot take advantage of their own act. That no sufficient reason has been assigned for re-hearing and the one of general strike from the work cannot be made a ground for the condonation for wilful default of appearance. The Bank had to incur expenses in representing their cases.
- (8) *Habib Bank (Bombay)*.—That the Union have not shown sufficient ground for not attending despite due notice. In fact their abstention could be considered as contempt of Court. That this Bank had no branch in U.P. and had to depute their Special Officer for the conduct of cases at Kanpur and incurred expenses in connection with that. The re-hearing should not be allowed.

The application was put up to-day for final decision and another opportunity was given to the Union Representative for arguments. Shri Gouri Shankar, Representative of United Commercial Bank, was present and he was also heard in reply. The Union representative this time once again explained their helplessness and the main plank of argument was the preparation for strike. It was admitted that the strike commenced on the 23rd but it was argued that the office bearers were busy in launching the campaign of strike. The other argument was that the strike is a weapon which is usually adopted in the furtherance of the cause of employees and reference was made to the case of Cox and Kings, Agents, Ltd. (published in Calcutta Gazette dated 8th August 1949), wherein some observations have been made as to when strikes are permissible. It was also urged that although the provisions of Rule 19 were applied and Tribunal must have looked into their cases but in some cases it is just possible that full justice may not be given particularly in cases of victimization and that under the provisions of Order 9 Civil Procedure Code, *ex parte* proceedings could be set aside. Finally it was urged that the strike was peaceful and some persons were detained at Kanpur only for picketing the Banks and as such the strike was not illegal. The Bank representative in reply controverted the above arguments and maintained that the abstention was deliberate and was calculated to hamper Court's work by show of authorisation and coercive methods. It was further argued that strike could not be treated as good cause and Order 9 C.P.C. did not apply when the provisions of Rule 19 of Industrial Disputes Act were applied.

Now these cases were heard in absentia at Kanpur with the application of Rule 19 of the Industrial Disputes (Central) Rules and the Rule reads as follows:—

"19. If without good cause shown, any party to proceedings before a Board, Court or Tribunal fails to attend or to be represented, the Board, Court or Tribunal may proceed as if he had duly attended or had been represented."

The use of the word "may" in the rule obviously empowers the Tribunal to proceed with the case as if the party had duly attended or duly represented; unlike the provision of Rule 9 of Civil Procedure Code whereby a suit filed by a plaintiff must fail in default and could be re-opened on the proof of sufficient cause by adducing evidence—oral or documentary—to the satisfaction of the Court. Under Rule 19 of the Industrial Disputes (Central) Rules, the Tribunal again has not been empowered to dismiss any claim for default of appearance but has to proceed if he finds that there was a good cause for absence. In the hearing of these cases at Kanpur as observed by me in my previous orders I was not fully satisfied that the cause was good but still in the interest of natural justice and more especially in the anxiety that the employees were likely to suffer and not the office bearers of the Union who in their obsession of organised power had betrayed their trust; the provisions of Rule 19 were applied in all cases indiscriminately in order to safeguard the interests of the applicants, and the proceedings ended in full hearing.

Without entering into the question as to what this alleged strike was and what made them to go on strike and as to whether this strike contravened the provisions of Sections 22 and 23 of the Industrial Disputes Act or not, the Tribunal has only to see as to whether the absence was wilful, deliberate or was occasioned by events beyond their control. In this respect as disclosed by the objections of the Banks concerned summarised above and the history and background of the non-participation of the Union in the proceedings at Kanpur given in previous orders, it is abundantly clear that the Employees Union was out not to participate although the notice dated 3rd April 1951 was received by them on the 5th or 6th April. Telegrams received in this connection and the replies sent furthermore reveal beyond any manner of doubt that there was ample time for them either to postpone the strike or to make arrangements for the conduct of the cases which were entrusted to them by the Employees and the argument that if they knew before they could have postponed the strike, appears to be wholly untenable. The resolution, as pointed out in the objections of one of the Banks, was adopted on the 16th and published in the Daily Herald of 17th April 1951 and as such the non-participation move was made deliberately and in utter disregard to the advice and directions given by the Tribunal. I should hardly add that the dispute between the employer and employees stands on different footing and any attempt to browbeat a judicial court by way of non-participation or boycott (which word was used in the misleading statement published in the Daily Herald of 17th April 1951) is a grave matter and may well attract the provisions of contempt of Court if so chosen. At any rate I am of the considered opinion that it would be putting premium on the capacity of mischief if a party deliberately decides to hamper

judicial work by such organizational exhibition of non-co-operation and then be allowed to get their cases to be re-opened. The Courts have been and shall remain much above from such disputes and attendance in Court could not be confused with any such dispute between the employer and employees. It, however, appears to me that the Union either has some wrong conception about the Court proceedings or have certain obsession about their privileges and power and the sooner they are disillusioned the better.

In the result I see no justification whatsoever to re-open the cases and I am rather of the opinion that I have no jurisdiction after having applied the provisions of Rule 19 to call upon the Banks once again for re-hearing. The application is accordingly dismissed.

CAMP: Naini Tal, 14th June 1951.

(Sd.) K. S. CAMPBELL-PURI, Chairman.

The next sitting took place in the month of May at Dehra Dun from 7th May to 19th May 1951 while the third sitting was held at Naini Tal from 7th to 14th June 1951. The representatives of the Banks concerned as well as the representatives of the U. P. Bank Employees Union attended the proceedings at Dehra Dun and Naini Tal and some individual cases were also heard and the applicants present in person addressed the Tribunal. The number of claims or complaints decided at these three sittings mentioned above was about 260 and this award shall govern the adjudication of all these cases as detailed below.

I. Reference No. 2 of 1950

CENTRAL BANK OF INDIA LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, Shri Ram Lobaya, Shri B. D. Sharma etc. for U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun), Shri R. D. Goyal in person.

Shri B. N. Khanna, Advocate, along with: (1) Shri P. A. Devitra, Chief Agent, Kanpur Group, (2) Shri N. B. Wadia, Chief Agent, Lucknow Group, (3) Shri P. B. Tipnis, Agent, Bareilly, (4) Shri M. M. Santana, Agent, Banaras, (5) Shri R. S. Thakur, Sub Agent, Saharanpur, (6) Shri B. S. Lohewala, Sub Agent, Agra Cantt., (appeared at Kanpur), and Shri B. S. Lohewala, Sub Agent, Agra Cantt. for the Bank (appeared at Dehra Dun).

(1) *Ambarsaran Tandon*.—This claim was filed by the applicant in his individual capacity but at the time of hearing he pleaded his inability to attend the Court on account of illness by letter dated 14th April 1951. The case, however, was heard in absentia under the provisions of Rule 19 of the Industrial Disputes (Central) Rules in the light of the pleadings.

The facts put briefly are that Shri Ambarsaran Tandon joined the Bank's service as godown keeper in 1943 and was subsequently promoted as Assistant Cashier and worked for about three years. His services were terminated on 10th June 1949 as the Treasurer Contractor withdrew the guarantee on his behalf. The grievance of the applicant is that his services were dispensed with without making any enquiry or good cause. The Bank representative in reply contended that the cause of action arose before 13th June 1949 and this case does not fall within the ambit of the Reference which deals with causes having arisen after 13th June 1949. It was maintained that the Tribunal has no jurisdiction over the case. On merits Shri Khanna on behalf of the Bank produced the explanation of the applicant (Ex. 1) dated 7th June 1949 in reply to the charge levelled against him to the effect that he was entrusted with a cash remittance of Rs. 50,000 to be carried over to Muthiganj office from Allahabad Main Office and that he was negligent to leave the box in the main office, having carried an empty box with the result that the remittance was delayed. It was further contended that the Treasurer after that incident withdrew the guarantee and the Bank could not retain him in service without that.

Now the cause of action as disclosed from the application itself admittedly arose earlier than 13th June 1949 and the Tribunal has thus no jurisdiction to try this case in the purview of the Reference as well as the Schedule attached with the reference. The claim falls on this short ground and must be dismissed.

(2) *Kashi Nath Mehrotra*.—The facts of this case are almost identical with that of Shri Ambarsaran Tandon decided above. Shri Mehrotra was also working as Cashier at Mahobe branch of Central Bank of India and in his case the

guarantee was withdrawn by the Head Cashier Contractor in the year 1948 whereupon his services were terminated by the Bank. The applicant moved the All India Industrial Tribunal (Bank Disputes) which was functioning in those days and their lordships dismissed the claim by their award published in the *Gazette of India* dated 19th August 1950. It was contended on behalf of the Bank that in the first place the applicant had no *locus standi* to move this Tribunal and furthermore the cause of action arose before 13th June 1949 and as such the case was not triable by this Tribunal.

Both these legal objections obviously prevail with the result that the application is dismissed.

(3) *Shiv Narain Mehra*.—The case of the applicant as disclosed by the application is that he was the General Secretary of the Branch Union and he was once transferred to Pillibhit but the same was cancelled. The Bank however withheld his annual increment on account of his Union activities. No other fact was mentioned in the application nor any documentary evidence in support of the allegation with regard to his Trade Union activities was adduced.

The learned Counsel for the Bank in reply stated that the applicant was working as Cash Book writer at Bareilly branch and his work usually used to begin in the evening. In the course of his work several charges were levelled against him including one for breaking of furniture and writing forged withdrawals, smoking, etc. In support of the first charge, the Bank representative produced the original report of the Jemadar (Ex. 1), report of the guard (Ex. 2), Charge Sheet (Ex. 3) and the explanation of the applicant (Ex. 4). Regarding second charge it was submitted that the same related to two withdrawal forms (Exs. 5 and 6) purported to have been written by Shri S. N. Mehra, the applicant. In this connection a copy of charge sheet (Ex. 7) and his explanation (Ex. 8) were relied upon; and it was maintained that due enquiry was made on the charges and the applicant was given opportunity to explain and to lead his evidence. He, however, evaded to meet the charges and did not satisfy the management. The Chief Agent, Lucknow, in his report and findings (Ex. 9) furthermore, found that Shri Mehra had adopted dilatory tactics to earn overtime allowance and had assisted Shri R. C. Kakkar to forge Kakkar's wife's signature on the withdrawal form. He was accordingly warned and it was noted in his Service Book that if he does not mend his ways drastic measures will be taken against him. The learned Counsel urged that in these circumstances the management was justified to withhold his increment on account of his conduct and behaviour.

The point involved is one as to whether the increment was withheld on good reasons or *mala fide* on account of the applicant's Trade Union activities. The Bank representative as said above brought on the record documentary evidence as borne out from Exhibits 1 to 9 which amply goes to show that the employee gave cause to the management more than once to take some action against him. They say that an event once occurred may be an accident and second time it may be even a coincidence but if it is repeated third time it should be safely inferred that the man is in the habit of going wrong. From this principle which carries a good deal of truth, I am of the opinion that the management was wholly justified in withholding the increment and no case was made out that the same was done on account of any bad labour practice on the part of the Bank. The applicant as disclosed from his application happened to be the Joint Secretary of the Union and his position in the Union cuts both ways. It is just possible that the Bank might have a grouse against him for his Union activities and it is also possible that he was bold enough not to attend to his work having been an office bearer of the Union. Some of the charges levelled against the applicant moreover relate to forged withdrawals and appear to be of serious nature. For all these reasons, the punishment of withholding one increment to my mind is not so unduly severe as to call for interference. In the result, the application stands dismissed.

(4) *Mukh Ram, Peon*.—The grievance of this employee as disclosed by the application shortly stated is that he joined the Central Bank of India three years ago and was working all right; but it so happened that he made a complaint against the Sub-Agent, Sitapur, to the Secretary, U.P. Bank Employees Union to the effect that the said Sub-Agent used to take household work from him. It was alleged *inter alia* that on this, the management became inimical towards him and sometime after he was coerced to sign a paper and then all of a sudden was served with a notice of dismissal dated 23rd June 1949. The relief sought was for reinstatement with retrospective effect from 23rd June 1949 and payment of salary and allowances for the intervening period as well as for the grant of Provident Fund contribution, leave, bonus, etc.

The Bank representative in reply denied categorically the allegations made in the application and submitted that he was negligent in his duties and also tried to flout the authority and was not courteous to constituents of the Bank. The other accusation against him was that he used to borrow money from the constituents and for all these faults and shortcomings he was charge-sheeted. He apologised and promised to behave properly in future and was let off. He, however, did not show any improvement in his behaviour and the Bank was constrained to terminate his services. Reliance was placed on the documentary evidence (Exhibits 1 to 10) and it was maintained that the action taken was justifiable and no case was made out for reinstatement.

On perusal of Exhibits 1 to 10 it appears that the staff used to stay late beyond 5-30 p.m. as borne out by Exhibit 3, dated 4th November 1948, and it so happened that some of the letters entrusted to the Peon for delivery were not delivered at the proper time. He was charge-sheeted once in 1948 in respect of these shortcomings in the performance of his duty but he apologised and no action was taken against him. Now in the order of discharge in question it was stated that he did not show any improvement in his behaviour, but this time admittedly he was neither charge-sheeted nor given any opportunity to explain his conduct. The management, however, as evidenced from Exhibit 8 approached the Labour Commissioner, Uttar Pradesh, Kampur, for permission to dismiss the peon but the same was not forthcoming on the plea that permission was not required from the Labour Commissioner for the cases of discharge, dismissal, suspension etc. as borne out by Labour Commissioner's letter dated 2nd May 1949 (Ex. 10). The management on receipt of this communication from the Labour Commissioner's office should have pursued in the matter of permission under Section 33 from the Tribunal but the Bank representative admitted that no such permission was asked for. Under these circumstances the order of discharge was bad in law. On merits also, although I feel that the Peon was sloth in the performance of his duty, yet the extreme penalty of dismissal was not called for. His allegation in the application that he had made a complaint against the Sub-Agent, Sitapur for taking household work from him is not categorically denied by any evidence in rebuttal and it is not beyond the range of possibility that the Peon was not liked by the staff on account of his defiance in not submitting to all sort of work. At any event, in consideration of all the facts and circumstances, I am not satisfied that the management was justified to terminate his services. In the result the claim shall succeed and is allowed. The Bank is directed to take him back in service within one month when the award becomes operative and to pay his back salary for 6 months including allowances prior to reinstatement.

(5) *Ram Autar*.—It was alleged in the application that his case was one of victimization and at the same time it was stated that his services were terminated on the plea of gross misconduct. The facts briefly are that Shri Ram Autar, who was an old employee, was charge-sheeted on the 20th June 1949 (Ex. 2) to the effect that serious complaints were being received against him from various officers, clerks as well as from the Jamadar against his conduct and that why disciplinary action be not taken against him. On 19th October 1948 another complaint was made against him by Shri K. J. S. Banaji, Manager of the branch, as well as the Accountant, the Jamadar and two clerks regarding his misbehaviour, whereupon he was called upon to explain and the matter was reported to the Managing Director. A copy of the explanation submitted by Shri Ram Autar, Peon, was brought on the record wherein he denied the charge and on the contrary complained that he was being abused and harassed by the officers. The management also relied upon the documentary evidence exhibited (Exs 3 to 9) comprising over the complaints of several clerks, officers of the Bank and the Jamadar and also produced a copy of final order dated 26th July 1949 (Ex. 10) whereby his services were terminated with immediate effect on the plea of misconduct. He was paid one month's salary in lieu of notice.

Now the documentary evidence adduced by the Bank reveals that no less than a dozen employees of the Bank including some officers had reported against this Peon and it appears that everybody was sick of him. On the perusal of these complaints, I find that he behaved rudely more than once and it is moreover too much to say on his behalf that everybody became inimical towards him, a member of the menial staff, without any just cause. The dismissal order was passed for gross misconduct under the old Act of 1947 before the amended Act came in force and as such permission of the Tribunal was not strictly needed. At any rate, there is enough of material on the record to establish the charge of misconduct against the Peon to justify the termination of his services and I see no good reason to interfere with the decision arrived at by the Bank; with the result that his claim fails and is dismissed.

(6) Application of the General Secretary, U.P. Bank Employees Union, Kanpur, dated 4th April 1950 comprising employees of Central Bank and Several Other Banks.—A claim was preferred by the U.P. Bank Employees Union, Kanpur, by a letter dated 4th April 1950 relating to (a) Stoppage of increments of the staff of Mirzapur Branch, discharge of (b) Mulkh Raj (Sitapur), (c) Ram Autar (Kanpur), (d) Man Chand (Saharanpur) from service and the transfer of (e) Bal Kishan (Aligarh) as well as regarding (f) the non-payment of Bonus and Overtime allowance to Raghunath (Banaras). It was stated that a list of some cases (along with names of other Banks) is sent for information and necessary action and that the petitions of individuals concerned will be submitted in due course. The reason given was that the Secretary of the Union was busy owing to the proceedings of the All India Industrial Tribunal (Bank Disputes) and that they could not submit the claims. The record reveals that the Union was informed by the office to submit the individual claims but still the Union did not comply, and as such there is no regular claim for the purpose of adjudication. The Bank, however, in their written statement gave certain facts which are being utilised now for the purpose of discussion.

The Bank representative submitted that this was incorrect to say that the increment of all the employees of Mirzapur Branch was stopped. Of course, in one case viz. of Shri A. N. Mehrotra, it was withheld on account of his misconduct. Regarding the cases of Man Chand and Bal Kishan, it was stated by the Bank representative that their increments were not stopped but in the case of Raghunath it was also stopped on good grounds. In this respect it was stressed that Shri Raghunath was charged with several offences including one of forged entries in the Attendance Register, making false claim of over-time allowance as well as general misbehaviour. He was duly charge-sheeted and due enquiry was held giving him an opportunity to submit his explanation. He was ultimately dismissed but on the intervention of the Labour Commissioner was reinstated. It was, however, urged that the employee continued misbehaving and an application under Section 33 of the Industrial Disputes Act was filed for the express permission of the Tribunal to dismiss him from service. On perusal of the record it was found that no notice was sent on that application by the office and it was much too late to take up that application at this stage and the Bank representative was directed to move into the matter afresh if so desired. The present claim for releasing increment etc. in consideration of all the facts and circumstances mentioned above is not sustainable and the same is disallowed.

(7) R. D. Goyal.—The facts as disclosed by the application of Shri Goyal shortly stated are as follows: Shri Goyal joined the Bank's service in 1943 and was working as a Clerk-in-charge at Baraut Pay Office in 1943. He was drawing a salary of Rs. 80 per month. During the course of his service B. B. Singh's award came into force whereby a salary of Rs. 120 per month was fixed for Supervisory staff with effect from January 1947. The same award was further clarified by Justice Vind Vasani Prasad. Shri Goyal was transferred to Muzaffarnagar some time after and the duties entrusted to him were of a supervisory nature and identical with those of an Officer-in-charge. He approached the management for the payment of arrears in the terms of the said awards on the plea that although his designation was of a Junior Assistant still he was doing work of a supervisory nature and as such was entitled to the benefit awarded under the said awards. The management, however, did not see their way to make any payment according to the terms of the award and the Tribunal was moved in this connection. It was further stated that Shri Goyal happened to be the President of the Muzaffarnagar Unit and the Bank treated him on different footing on account of his Trade Union activities. It was emphasised that the Bank had arbitrarily deprived him of his dues and as such the case amounted to victimization.

A preliminary objection was raised on behalf of the Bank that the relief relates to a period earlier than 13th June 1949 and as such the matter does not fall within the scope of the Reference. It was argued that causes arising after 13th June 1949 are only to be heard under this Reference as stated in the Schedule annexed with the Reference. On merits the Bank representative also explained the whole position and opposed the application. The prayer embodied in the penultimate paragraph of the application is to the effect that the Bank be ordered to make payment of the arrears since 1st January 1947 and as such is clearly out of the scope of the Reference. The application fails and is disallowed.

(8) Bal Krishna Arora.—His case is that he had been working at Aligarh since 1944. On the enforcement of the Conciliation Board award he began to take keen interest in the Union activities and happened to be a member of the local strike Committee and organised the employees of the local branch of the Central

Bank of India. His activities were not liked by the management and he was warned on several occasions to desist from such activities but he continued to take active interest in Trade Unionism. He was therefore transferred to Ujhani where he could not join as his wife was ailing and his circumstances did not permit. It was argued on his behalf that the transfer was actuated by ulterior motive in order to accommodate another person and the matter was ultimately referred to the Chief Labour Commissioner and the All-India Industrial Tribunal (Bank Disputes) which was functioning in those days was also moved. Their lordships of the said Tribunal did not take cognizance of the same as the cause of action arose after 13th June 1949. The relief sought was for re-transfer to Aligarh.

The Bank in reply while giving the short history of his employment alleged *inter alia* in their written statement that Shri Arora on his own representation was transferred to Aligarh in May 1945. He, however, actually wanted to go to Mathura, his home place, but as a vacancy occurred at Aligarh he was transferred there. It so happened that Shri Shukla, a clerk of Ujhani office asked for transfer on the ground of ill health and on the recommendation of the Agra branch Agent he was transferred from Ujhani to Aligarh and Shri Arora was directed to report for duty at Ujjain office. He, however, applied for leave on a Medical Certificate wherein it was stated that he was ailing from cough and fever. It was contended by the management that the certificate appeared to be bogus but the subject, however, was granted leave and was advised to join his duty at Ujhani. He again defied the order and did not join and again applied for leave and furthermore through the local Union moved the Chief Labour Commissioner and other authorities concerned. It was stated that Shri Arora also made a representation to the District Magistrate to take action against the Bank but his application was rejected. It was stressed on the strength of these allegations that Shri Arora did not comply with the orders of transfer and through the Union lodged all sort of complaints against the Bank. Reference was made to one complaint pending in a Court and the reply was quoted in the written statement. Finally, it was stated that Shri Arora did not apply for the cancellation of the transfer order but only asked for further leave on medical ground and otherwise.

On the appraisement of the facts and the attending circumstances which gave rise to this application my impression is that Shri Arora was defying the transfer order and it was rather the Bank who should have felt aggrieved. At any rate the transfer was made within the U.P. State which was permissible even under B. B. Singh Award. The Bank representative also referred to Government letter No. 1912/ST/XVIII-142(ST)-48, dated 18th April 1949 whereby transfer is allowed within the State of U.P. The claim is devoid of any substance and the same is disallowed.

II. Reference No. 6 of 1950

CHARTERED BANK OF INDIA, AUSTRALIA & CHINA

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, Shri P. C. Jain, etc. for the U.P. Bank Employees Union, Kanpur.
Shri R. C. Nigam, Indian Officer, for the Bank.

Sri Ram, Chowkidar:—The facts put briefly are these: Sri Ram was a permanent employee of the Bank and was alleged to have been an active member of the U.P. Bank Employees Union also. His services were terminated in the first instance in May 1950 but as the Union approached the employer, the latter reconsidered his case and he was reinstated and carried on for sometime more. It was further alleged that the applicant was dismissed once again on 30th October 1950 by Bank's letter No. 7005 (copy enclosed with the petition). It was contended by the Union representative that the dismissal was traceable to his Trade Union activities and the Bank was not justified in terminating his services without having obtained the prior permission of the Tribunal. The procedure moreover adopted by the Bank was against the one laid down by the All India Industrial Tribunal (Bank Disputes) in Chapter 24, Section II (para. 319). The prayer was for reinstatement and payment of back pay etc. In evidence reliance was placed on a letter dated 30th October 1950 (Ex. A). Some other letters *viz.* a letter addressed to the Agent by the Employees Union Secretary dated 26th May 1950 (Ex. B), letter dated 19th May 1950 (Ex. C), letter dated 7th February 1951 (Ex. D) and letter dated 29th January 1951 (Ex. E) were also produced in evidence in support of the allegation. It was contended that the services of this employee terminated after 20th May 1950 and under the amended Act, the provisions of Section 33 were violated.

and as such the order of dismissal was bad in law as well. It was further stressed that on merits there was no case of misconduct established against the employee and the dismissal order was also not warranted by facts. Reference was made to this Tribunal's award under Section 33-A in the case of B. S. Mehra (Bharat Bank) published in the *Gazette of India Extraordinary*, dated 31st March 1951 as well as the case of V. B. Belkhode of this Tribunal (Madhya Pradesh Bank Disputes Award of this Tribunal).

Shri Nigam, the Bank representative, while admitting substantially the facts given above argued that the applicant was discharged second time from service on 30th October 1950 due to the repeated neglect of duty and produced documentary evidence extending over 18 documents (Exhibits 1 to 18) in support of the plea viz. neglect of duty. Another written statement in the form of better pleadings, dated 5th June 1951 was also filed and it was strenuously contended that the applicant became a habitual offender in the neglect of duty and the Bank had to terminate his services. The Bank representative also made a request for the postponement of the case in order to examine one Shri Chotey Lal, who was out of India in those days but he had nothing to say in regard to their failure to obtain the necessary prior permission for the discharge of the employee under the provisions of Section 33 of the Act. In this respect it is significant to note that the cause of action arose after the enforcement of the amended Act and as such it was obligatory upon the Bank management to obtain permission even in the case of alleged misconduct. In these circumstances it is a clear case of the violation of the provisions of Section 33 and even if the version given by the Bank be accepted that the employee in question by his repeated neglect of duty and misbehaviour had forfeited the confidence of the employer, I have no alternative but to set aside the order of discharge for want of permission. The ground for the reversal of the order is no doubt highly technical but in case the provisions after the enforcement of the amended Act are not given effect to, it would prove a dead letter and notwithstanding of the general policy of the Tribunal to prefer natural justice to technicalities, I think some of the provisions are mandatory and there is no escape but to apply them. The case accordingly must succeed on this legal ground. The request for the examination of witness Chotey Lal was declined because in the first place the award of U.P. cases could not be deferred for this one case and secondly the testimony of that witness could not have improved the position of the Bank so far the legal aspect of the question viz one of permission was concerned. In the result the claim is allowed and the Bank is directed to take Sri Ram, Chowkidar, back in service as well as to pay his back salary with all allowances admissible under rules from the date of discharge to the date of reinstatement. This direction shall be carried out within one month when the Award becomes operative.

III. Reference No. 13 of 1950

NATIONAL BANK OF INDIA LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, Shri P. C. Jain, etc., for U.P. Bank Employees Union, Kanpur, Shri A. N. Mehrotra in person (appeared at Dehra Dun and Naini Tal).

Shri R. K. Khanna, Advocate, assisted by Shri A. S. Harris, Manager, Kanpur Branch, for the Bank (appeared at Kanpur).

Shri A. S. Harris, Manager, Kanpur Branch, for the Bank (appeared at Naini Tal)

(1) *Working Hours for the Menial Staff.*—This application was preferred by the Secretary, U.P. Bank Employees Union, but no representative of the Employees Union has come forward to represent the cause. The application was accordingly heard *in absentia* under Rule 19 of the Industrial Disputes (Central) Rules and the Bank representative was called upon to state the facts both ways:

The case of the menial staff as disclosed from the application is that the working hours for the entire menial staff of the local branch of National Bank of India were 8 hours; but after the appointment of the All India Industrial Tribunal (Bank Disputes), the Bank increased the working hours from 8 to 9 hours for the menial staff of their own accord. It was contended *inter alia* that the *status quo* between the parties was thus disturbed during the pendency of the Tribunal proceedings and the provisions of Section 33 were violated by the Bank by changing the hours of work after 13th June 1949. Reference was made to para. 10 (page 5) of the U.P. Conciliation Board Award and it was maintained that the Bank be directed to reduce the working hours of the menial staff from 9 to 8 hours and be allowed to get overtime allowance for taking the extra work after 13th June 1949.

In reply on behalf of the Bank it was submitted that according to the records, increase in the working hours of the menial staff was made on the 3rd January 1950 and not from 13th June 1949 as alleged by the other side and furthermore the same was made in consultation with the Conciliation Officer (Central), Kanpur. Reference was made to the correspondence which ensued between the Bank and the Conciliation Officer as evidenced from letter dated 7th January 1950 (Ex. 1) and the reply of the Conciliation Officer dated 13th January 1950 (Ex. 2) as well as another communication sent by the Bank Manager to the Conciliation Officer (Ex. 3) to which no reply was forthcoming. It was argued on behalf of the Bank that under U.P. Shops and Establishment Act, Sec. 8, the Bank was justified in taking 8 hours work from the staff concerned exclusive of interval for rest and this question was referred to the Conciliation Officer for confirmation. The Conciliation Officer in his letter dated 13th January 1950 (Ex. 2) mentioned above agreed with the interpretation put by the Bank and directed the Bank to ask the members of the menial staff to work in accordance with the law and if they have any doubt they should put reasons in writing.

The point involved has been discussed in Issue Nos. 80 (overtime allowance to Chowkidars) and 81 (overtime allowance for Sundays and holidays) at pages 34 and 35 of the Conciliation Board Award and the following observations may well be quoted with advantage without elaborating the point further:

"A close examination of the discussion by Shri B. B. Singh under Issue No. 11 of his Award will show that the hours of work and overtime allowance prescribed by him were only for clerks and not for peons and chowkidars or, for the matter of that for any one who fell in the class of inferior grade servants. Both in paras. 43 and 44 he used the word "Clerks" only. He did not prescribe these hours of work for manual workers like peons, chowkidars, malis, farrashes, watermen, sweepers, etc. It is obvious that the hours of work laid down in the Award cannot apply to a chowkidar who has to guard in the night."

- (b) Now, when Shri B. B. Singh's Award as to the hours of work did not apply to the chowkidars, Section 8 of the United Provinces Shops Commercial Establishments Act, 1947, which provides that no employee shall be required to work for more than eight hours a day will be applicable to them. They are entitled to overtime allowance only if they work for more than eight hours a day in accordance with the second proviso to section 8 of the Act.

Again, Section 8 of the U.P. Shops and Commercial Establishment Act, 1947 reads as follows—

"No employer shall allow or require any employee to work for more than eight hours in any day, exclusive of intervals allowed for rest or for meals: Provided that during any period of stock-taking, making of accounts or any other purpose prescribed, any person, other than a young person, may be allowed or required to work for more than the hours fixed in this section, but not exceeding 120 in the aggregate in any year."

Provided also that any person employed overtime shall be entitled to remuneration for such overtime work at twice the rate of his normal remuneration calculated by the hour

Explanation—For the purpose of calculating the normal hourly wage the day shall be reckoned as consisting of eight working hours."

Now the explanation quoted above clinches the point in question that the menial staff was only entitled if the work taken out of them exceeded 10 working hours. The correspondence referred to above initiated by the Bank with the Conciliation Officer also indicates the good faith of the Bank authority and it appears that the menial staff felt aggrieved on the increase of the time which did not apply in the case of clerks. But this addition is covered in the U.P. Shops and Commercial Establishment Act, Sec. 8 and the grievance appears to be without any substance. In the result the claim fails and the same is disallowed.

(2) *Amar Nath Mehrotra*.—The Union case is that Shri Mehrotra joined the Bank's service on 2nd December 1945 and was working as a permanent employee with a good record at his back; but the Bank terminated his services on 3rd June 1950 on certain charges of misconduct. Adverting to the charges the Union representative argued that the main charge related to an incident whereby a certain cheque of Rs. 4,826-14-0 was presented at the Bank through clearing by Punjab National Bank for payment. The cheque was drawn by Messrs. Girdhari Lal & Sons in the name of one Ram Charan Bhatia who deposited the same at the Agra Branch

and it was sent by the Punjab National Bank, Agra, to their Kanpur office for clearance. It was presented on the 27th May 1950 and Shri Mehrotra happened to be the ledger keeper and he had to deal with this cheque. Shri Mehrotra on the sorting of cheques found when coming to this cheque that the balance at the credit of the drawer was not sufficient to meet the needful. This cheque was shelved off for sometime and he went on dealing with other cheques. Meanwhile the drawer Ram Prasad Bhatia turned up and when the fact was brought into his notice he took the cheque and sometime after it was placed on the table and Shri Mehrotra subsequently found that the figures also did not tally. He accordingly returned the cheque with the following remarks:

- (a) That the amount of figures and words differs.
- (b) Payees endorsement on the cheque is required.

It was further stated by Shri Sekhri that the third remark *viz.* the amount at the credit of the drawer in the Bank is not sufficient should have been given at the time of return but it was not given. In this connection it was submitted that he had a loan account with the Bank also and Shri Mehrotra while submitting his explanation (Ex. B) to the charge (Ex. A) levelled against him stated that he was not at all negligent and at the same time offered his apology. The Bank, however, without appreciating his plea or taking much care of what he said in his explanation terminated his services. The Bank furthermore referred the matter to the Regional Labour Commissioner and sought his permission for dismissal who in reply stated that he had no objection to terminate his services as he did not want to interfere in the case where an employee does not conduct according to the rules and regulations of the Banking Institutions especially of the nature under reference as evidenced from his letter dated 3rd June 1950 filed by the Bank with their written statement (Ex. C). The matter, however, did not rest there and was reported by the Employees Union to the Chief Labour Commissioner and the Hon'ble Labour Minister and on enquiry as to whether the permission of the Tribunal was obtained or not from the employer the case was sent to the Chief Labour Commissioner and a Deputy Secretary of the Ministry of Labour was deputed to enquire on the spot. After due enquiries a prosecution was launched against Shri Clark, the then Manager of the Bank. The Magistrate, however, came to the conclusion that Shri Clark could not be convicted as the case was dealt with by Mr. Hill, who had left India. On the termination of the aforesaid prosecution proceedings, this application was filed through the Union and prayer sought for now is that the charge against the employee was not proved and the Bank was not justified in terminating the services without obtaining the prior permission of the Tribunal. Reference was made to the case of one R. C. Aurora (published in the Punjab Bank Disputes Award of this Tribunal) as well as the case of B. S. Mehra under Section 33-A of the Act and the case of V. B. Belkhode (Madhya Pradesh Bank Dispute Award of this Tribunal).

Shri Harris, the Bank representative in reply raised the legal objection that the application was not filed by Shri Mehrotra in his individual capacity as required under the provisions of Section 33-A and that after having prosecuted the Bank under Section 31, no other application under Section 33-A or in general could be made to re-agitate the same matter. On merits Shri Harris relied upon the documentary evidence already filed with the written statement and duly tendered them in evidence *viz.* (1) letter dated 31st May 1950 (Ex. 1), (2) Charge sheet dated 1st June 1950 (Ex. 2), (3) Explanation of Shri Mehrotra (Ex. 3), (4) letter of the Bank dated 7th April 1950 (Ex. 4), (5) letter dated 3rd June 1950 sent by Regional Labour Commissioner already exhibited by the Union (Ex. C); (6) letter of drawer Shri Ram Prasad dated 3rd May 1950 (Ex. 5), (7) letter dated 7th November 1950 sent by the Manager, National Bank to Chief Labour Commissioner (Ex. 6), regarding dismissal of Shri Mehrotra. The Bank representative also produced the original cheque in question relating to which Shri Mehrotra was charged (Ex. 7) as well as the original letter of Shri Ram Prasad, a copy of which has already been exhibited (Ex. 5-A). A telegram dated 30th May 1950 pertaining to the cheque in question was also produced (Ex. 8). Shri Harris on the strength of the documentary evidence mentioned above, maintained that the Bank was perfectly justified in terminating the services of Shri Mehrotra of gross misconduct which consisted with the tampering of a cheque in collusion with the drawer Shri Ram Prasad. It was stressed that the cheque came for clearance through Bank's clearing house and it was not at all necessary for the drawer to look at the cheque or that it should have been shown to him by the ledger keeper. The drawer of the cheque furthermore in his statement (as may be seen from Ex. 5 and 5-A) had admitted that he altered the cheque in collusion with the Bank employee Shri Mehrotra. Shri Harris emphasised that it was a serious matter and it was wrong to treat it as a light one as alleged by the other side. That his explanation was duly considered and was not found to

be satisfactory or convincing as it ran counter to the oral statement made in the course of enquiry wherein he admitted his guilt. In regard to the permission it was submitted that the permission initially was obtained from the Regional Labour Commissioner and the Bank was not guilty of infringement of the provisions of Section 33-A and the dismissal order was a legal one.

Now this claim was preferred initially when notices were issued in pursuance of the Reference [Notification No LR 2(2/3), dated 21st February 1950] and as such the legal objection does not call for any serious notice and the case shall have to be decided on merits. The facts have been fully set forth above and the two different versions adopted by the parties when put to scrutiny go to establish at least this much beyond any manner of doubt that Shri Mehrotra was responsible to allow Shri Prasad to make a certain change in the cheque although the same was received through clearing and the drawer was not expected to have been present at the time of handling. The original cheque was produced and the addition of three pies with different ink stands prominent to the naked eye and this alteration again was not denied by the Union side. Shri Mehrotra also did not care to come into the witness box and the main plank of argument advanced on his behalf was that this alteration was made without the knowledge of Shri Mehrotra who was busy in other work and this change was made at the time when this cheque was handed over to Shri Prasad. The Union Representative, Shri Sekhri, furthermore emphasised that the alteration was made only in figures and not in words and the Bank for the purpose of payment could take the lesser amount and as such the change was not material. The Union representative however had no reply to the documentary evidence embodied in Ex. 5—a letter dated 31st May 1950 sent by the drawer Ram Prasad to the Manager, National Bank of India. The free English rendering of this document reads as follows:

Ex. 5. "A cheque for Rs. 4,826-14-3 which I issued in favour of Ram Chandra Bhatia of Agra was presented to you through Clearing on 27th May. I asked Babu Amar Nath to show it to me. On seeing the cheque I said to Babuji to return it unpaid. With the permission of Babuji I increased three pies in the cheque with my hand so that the cheque be returned.

I had issued the cheque as 'bearer'.

I did this because there was some mistake in my account with Ram Chand Bhatia.

The above has been written by me of my ownself and without any pressure of anybody on me.

For Girdhari Lal & Son.

Ram Prasad,
Proprietor, 31-5-50."

This Ram Prasad was not stated to have been inimical to Shri Mehrotra and it is abundantly clear from his statement that the change was made with the consent of the clerk viz. Mehrotra. It is a different matter that Shri Mehrotra may not have got any monetary gain but the alteration made with his consent or connivance manifestly makes him liable for the tampering with the document in order to delay or avoid the payment of the cheque on the excuse of alteration which was deliberately made for achieving that object. This sort of conduct in the administration of Banking Companies definitely amounts to dishonesty of purpose and cannot be treated as lightly as the Union representation has sought to argue. I am satisfied that it was a case of misconduct and as such under the old Act no permission was necessary; but in this case this permission was also asked for by moving the Regional Labour Commissioner in the matter as evidenced from RLC's letter dated 3rd June 1950 (Ex. C), wherein he has stated that he has no objection to the termination of the services of Shri Amar Nath Mehrotra as he did not want to interfere in cases where an employee does not conduct himself according to the rules and regulations of the Banking Institutions, especially of the nature under reference. The case is accordingly covered under necessary permission also and does not call for any interference with the result that the claim is dismissed.

IV. Reference No. 17 of 1950

ALLAHABAD BANK LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal etc., for U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun and Naini Tal).

Shri S. N. Mehrotra, Agent City Office, Kanpur—for the Bank (appeared at Kanpur).

Shri Jai Ram Sharma, Agent, for the Bank (appeared at Dehra Dun).

Shri Shiv Narain Mehrotra, Agent, for the Bank (appeared at Naini Tal).

(1) *Gurdial (Mazdoor):*—Shri Gurdial was engaged as a probationary Mazdoor at Bareilly branch on the 31st July 1949 on the usual term of probation for six months. His appointment was subject to the termination of services without notice and he was discharged on the 5th January 1950 as his work was not found satisfactory. As disclosed from the application the grievance of the applicant is that his services were terminated without obtaining the permission of the Tribunal under Section 33 of the Industrial Disputes Act 1947. It was further stated that he was verbally ordered not to enter the Bank's premises and he was not served with any written order in regard to the termination of his services. The Bank representative replying to the contention raised in the application that the provisions of section 33 were violated in the case of the applicant, submitted that the permission of the Tribunal was not required in his case as he was a probationer and was not a permanent employee. It was, also, stated that he was paid his dues.

Now it has been well recognised by this time that an employee on probation for the purpose of service condition cannot be treated as one in whose case the provisions of the change in service as contemplated under Section 33 apply. Accordingly the absence of permission does not invalidate the order and on merits also as evidenced from the order of discharge his services were terminated on the plea of unsatisfactory work during the probationary period. The employee is therefore not entitled to any relief with the result that the claim stands dismissed.

(2) *Bhagawan Din:*—His grievance is that he was working as a godown peon in Etawah branch and work was being taken from him on Sundays as well as on holidays. On one Sunday i.e. on 16th April he was absent and the Bank fined him Rs. 1-4-0 for non-attendance. He made representation to the head office as well as to the Regional Labour Commissioner but no action was taken. The prayer sought for was for the grant of overtime allowance for Sunday and other holidays. The Bank representative in reply submitted that the post held by Shri Bhagwan Din was one of godown peon and as such he was required to work on Sundays and other holidays in terms of U.P. Conciliation Board award—Issue No. 81. It was further argued that such employees were allowed 30 days privilege leave in a year as against 21 days leave permissible in the case of other employees of the subordinate cadre by way of compensation.

Now the employee himself admits that he used to work on Sundays and other holidays and only on one occasion when he did not attend he was fined. This clearly goes to show that his grievance is more or less regarding his absence on that one day and not that he was entitled to any extra allowance for working on holidays. The matter moreover is covered by the finding given on Issue No. 81 of the Conciliation Board award and as such the claim is without any merit. The same is accordingly disallowed.

(3) *Jaydayal Tandon:*—Jaydayal was admittedly posted at Jaswantnagar and the only point for determination is as to whether his posting was of a temporary nature as to entitle him to claim outstation allowance on his return or he was sent permanently owing to the exigencies of the service condition. The position taken up by the applicant in his application is that he was sent to Jaswantnagar as a temporary godown clerk on 11th April 1950 and returned back on 21st May 1950 and as such was entitled to the payment of outstation allowance from 11th April 1950 to 21st May 1950. Reference was made to the original order of posting dated 12th April 1951 (Ex. 1) issued from the Head Office and this document can safely be treated as good evidence for the determination of the point involved. The operative portion of the document reads as follows:

"We note that.....the stocks will be stored at Jaswantnagar, at which centre a senior and responsible clerk of your office will be posted in permanent residence to supervise all storage and deliveries."

This clearly denotes that Shri Jaydayal had been posted at Jaswantnagar under the instructions of the head office as a suitable hand for the post. The Bank or the strength of this letter argued that the posting was made as a permanent measure and not as a temporary clerk as stated by the other side; but it so happened that Shri Jaydayal himself asked to go back to Etawah on account of some domestic difficulties and he was recalled. It was urged that the claim was misconceived and the short period which he stayed there was construed by him as temporary posting. The matter hardly requires any further elaboration and can safely be resolved in reference to the order of posting quoted above with the result that the claim fails and the same is disallowed.

(4) *Jamuna Prasad*.—His grievance is that he was appointed as a Peon as borne out by the Establishment Register and appointment letter but he was forced to do the duties of a Chowkidar also whenever any Chowkidar used to go on leave. He was however not paid any overtime for the extra service rendered by him as a Chowkidar and it was prayed that he was entitled to some overtime allowance for Sunday etc.

The claim was opposed by the Bank side and it was averred that the applicant no doubt joined the Bank's service as a Peon but his work was not found satisfactory and instead of dispensing with his services he was made a Chowkidar in which capacity he was bound to work on Sundays and holidays according to U.P. Conciliation Board award (Issue No. 86). No evidence was adduced in support of the allegation that change was made in the designation of Shri Jamuna Prasad from Peon to Chowkidar and as such the case presents some difficulty to arrive at any positive conclusion. The pleadings however reveal that the applicant was shown as Peon in the application but in the body it was admitted that he was working as Chowkidar. The Bank in their written statement has shown him as Chowkidar from March 1950 when a change was made in his designation. The claim was filed in July 1950 and the attending circumstances indicate that some change had taken place in his service condition which of course is not substantiated by any other documentary evidence on record. In consideration of the contents of the statement of claim and the written statement it seems clear that he was made a Chowkidar in March 1950 and if this fact be accepted he was bound to work on Sundays and holidays in the terms of the Conciliation Board award (Issue 86). The claim accordingly appears to have been made on wrong assumption and is disallowed.

(5) *Amar Nath Tandon*.—The claim was not pressed and the same will be deemed to have been withdrawn.

(6) *Sundar Lal Agarwal*.—This is a case of transfer and the sole question is as to whether the transfer amounts to change of condition in service under Section 33. So far the facts are concerned both sides have admitted that the transfer took place and was made within the State. It is, however, contended by Shri Kakkar that Kosi Kalan is a smaller place and the transfer of the applicant to this place would rather affect his benefits and it is tantamount to change of conditions. It was further stressed that this transfer also affected the emoluments of the applicant also and in case the emoluments were not curtailed, the transfer may not be challenged.

Shri S. N. Mehrotra, the Bank representative, in reply stated that the transfer in question does not amount to any change in the conditions of service within the ambit of Section 33 of the Act. It was however admitted that the matter was referred to the Regional Labour Commissioner but the Bank in their reply dated 9th March 1950 claimed that the transfer was effected owing to the exigencies of the administration and as such did not contravene the provisions of Section 33. As no further information was forthcoming, it was argued that it may be safely inferred that the Regional Labour Commissioner was satisfied with the decision taken up by the Bank. It was further argued by the Bank representative that Kosi Kalan is a station which is styled rather unpopular and it is customary to post men for relatively short period. Selection of Sunder Lal Agarwal was made in that spirit in the ordinary course and was made due to any bad labour practice.

The record reveals that the matter was referred to the Regional Labour Commissioner, who on taking cognizance of the matter informed the Manager, Allahabad Bank, by his letter dated 9th March 1950 that he was requested to investigate into the matter and report and the transfer be withheld till a decision is taken in the matter. The Bank authority, however, explained the position while referring to certain legal precedents of the All India Industrial Tribunal (Bank Disputes), Bombay, and expressed their regret that they were unable to postpone the transfer. Now the Bank's stand was that nothing was heard further from the Regional Labour Commissioner and presumably he agreed with the stand

taken up by the Bank. There is, however, nothing on the record to show as to whether the Regional Labour Commissioner agreed or not and as such it is difficult to conclude as to whether the Regional Labour Commissioner actually accepted the position. The report of the Inspector furthermore was not placed on the record by the parties and on this meagre data I am of the opinion that the onus which lay on the applicant was not fully discharged. The transfer moreover must have been given effect to by this time and this item furthermore does not fall within the items mentioned in the Schedule attached with the Reference. I would, therefore, refuse to interfere in the matter. The claim is disallowed.

(7) *Gokul Prasad (Waterman).*—The essential facts of this case are these: Shri Gokul Prasad joined the Bank's service as a waterman. His designation was subsequently changed from Waterman to that of Farash. All India Industrial Tribunal (Bank Disputes) was moved by the Union in this connection and the parties came to settlement with the result that the same designation of Waterman was given to him and his privilege leave benefit was extended from 15 days to one month. Subsequently it so happened that the Bank management entrusted him with the duties of a garden coolie and thereby made a change in the conditions of service because as a garden coolie he had to forego certain privileges and moreover had to work for longer period. The applicant lodged a protest against this change and did not join his duties whereupon he was suspended and since then he is under suspension.

Shri Kakkar in this connection relied upon two documents tendered in evidence viz. (1) letter emanating from the office of RLC addressed to the Secretary, U.P. Bank Employees Union (Ex. A) as well as (2) another letter dated 23rd June 1950 sent by the Agent, Allahabad Bank to Gokul Prasad (Ex. B). On the strength of these documents it was contended that it was wholly incorrect to say as evidenced from RLC's letter (Ex. A) that the change was effected in the duties of Gokul Prasad with the consent of the RLC as conveyed to the applicant by letter (Ex. B). Lastly, it was submitted that as borne out by the facts and circumstances the change in the service conditions amounted to the violation of the provisions of Section 33.

Shri Mehrotra on behalf of the Bank admitted the facts as stated so far that settlement arrived at before the All India Industrial Tribunal (Bank Disputes) was concerned. Coming to the dispute now under adjudication it was submitted by the Bank representative that after the agreement arrived at before the said Tribunal in regard to the designation of Gokul Prasad it so transpired that a Bhisti at Bareilly fell ill and he went on leave for some length of time. On assuming duty, the Bank doctor recommended that he had become too old on account of continued illness and be given some light work. Accordingly the Agent of the Bank approached the RLC, Kanpur, and sought his prior approval regarding the changes in the duties of Gokul Prasad and Tula Ram and Mohan. Gokul Prasad did not agree to join the duty when effect was given to the approval of RLC while the two other employees took up the new duties assigned to them. The applicant accordingly was given another opportunity and was instructed by Agent per Registered A/D to join his duty immediately but he obdurately refused. The management accordingly suspended him from service as a disciplinary measure. Reliance was placed on a letter of the RLC dated 16th May 1950 (Ex. 1) whereby the adjustment of duties was approved. The letter dated 8th May 1950 whereby the move was made by the Bank for this adjustment was also produced in evidence (Ex. 2). Shri Mehrotra finally maintained that the change was made in the interest of the staff and the Bank was justified in giving effect to it with the approval of RLC.

Some other facts also were narrated by both sides which had no bearing on the real question involved namely, as to whether any change had taken place in the conditions of service.

The order of the Regional Labour Commissioner dated 16th May 1950 (Ex. 1), reads as follows:

Ex. I: "Reference your letter No. 1064, dated 8th May 1950, I am to inform you that in view of the facts stated by you the adjustment of duties as shown in your letter under reference is hereby approved."

This clearly furnishes a complete answer to the change made in duties but this by itself does not resolve the question and the point for determination furthermore is as to whether the order of suspension was justifiable. Now it was admitted that the applicant was informed of the RLC's approval in the matter and still he denied to join his duty. Under the circumstances the next move on the part of the Bank should have been to discharge him from service on the basis

of misconduct if his conduct amounted to that or should have asked permission to dismiss him. The Bank, however, did not pursue the matter and the suspension for this pretty long time is extraordinary. It appears that the Bank has ceased paying him any emoluments in the course of suspension and so conveniently forgot his case. The events however will have their own course and one cannot escape the ultimate result by blinking over the matter.

The subject of suspension was duly considered by their lordships of the All India Industrial Tribunal (Bank Disputes) in their award which has no doubt been declared invalid by the Supreme Court but the dictum in this respect still holds good by way of good argument and with respect I endorse the same to the extent that the suspended employee must be paid at least one-third of the emoluments during the period of suspension. Applying this principle I would allow the claim to this extent that Shri Gokul Prasad, Waterman, will be paid the amount of one-third of his emoluments that he was drawing at the time of suspension as subsistence allowance from the date of his suspension upto the date of the final decision in his case, for which the Bank is directed to arrive at as early as possible in their own interest according to law.

(8) *Raj Kumar* (Peon).—He joined the Bank's service as a Chowkidar in the year 1948. He applied for one month's leave in February 1949 but as he had not completed one year's service the request was declined. He again applied for one week's sick leave and then for extension supported by Medical Certificate but the Bank suspected the genuineness and deputed a Peon to make an enquiry. Raj Kumar, however, turned up himself and promised to resume his duties at Barhaj but despite the promise he did not report for duty at Barhaj until 18th June 1949. He was directed to proceed to Bareilly branch on transfer where he joined. On joining at Bareilly he was asked to take the work of a Peon and then that of a Chowkidar. The applicant however lodged a protest and explained his difficulties but no heed was paid and ultimately he was suspended from service. The prayer sought for was for the payment of his dues for the period in which he was not allowed to resume his duties as asked in the first claim and secondly for setting aside the suspension order as claimed in the subsequent application dated 10th August 1950.

Shri Mehrotra replying to the first part of the claim submitted that the applicant did not produce any Medical Certificate in support of the extension and when he turned up and asked to join his duties at Barhaj he abstained and remained absent from duty. The Bank representative maintained that the Bank should not be burdened with pay when he deliberately absented and did not apply for leave as required by rules. In regard to the second part of the claim viz. for setting aside the order of suspension it was argued that *Shri Raj Kumar* joined his duty in July. It was found that he was very suitable for the work of a Peon because he could sign while the man who was put in his place in the absence of *Raj Kumar* was altogether illiterate. He continued for some time but failed to perform the duties of the distribution of Dak. He was asked to work as Chowkidar on the 13th February 1950 but he refused to take up the duty; then he was asked on 7th June 1950, he again did not comply with the order and again on 30th June 1950. Finally warning was given to him on 5th July 1950 but still he persisted to join and his persistent refusal forced the Bank to suspend him from duty from 7th August 1950.

The first part of the claim is devoid of any merit and the same is disallowed. Regarding the second part viz. suspension from service his case is also almost identical with that of *Gokul Prasad* discussed above. The Bank representative admitted that they have not applied under Section 33 to dismiss him upto now and the employee has been under suspension for a pretty long time. As observed in the case of *Shri Gokul Prasad* in this case also the Bank is directed to pay the employee one-third of the emoluments as subsistence allowance from the date of suspension to the date the decision is arrived at by the Bank in their own interest to discharge him from service or to take him back according to law as soon as possible.

(9) *Kashi Prosad Tewari*.—The applicant was not present and the case was heard in absentia under the provisions of Rule 19 of the Act. *Shri Kashi Prosad* was suspended from service sometime back but he was allowed to resume duties after three days. The petitioner has claimed his salary for this suspended period of three days. Copy of charge was enclosed with the claim and it was marked as Exhibit A. The stand taken by the applicant as disclosed from the document brought on the record has been explained in his explanation dated 24th July 1950 (Ex. 1) while the position taken up by the Bank in suspending him has been embodied in the order of suspension dated 22nd July 1950.

Now the period of suspension was three days only and he was taken back and he is still working. The stand taken up by the Bank was that non-payment of three days salary was by way of punishment. It is not a fit case for interference and the same is disallowed.

V. Reference No. 20 of 1950.

PUNJAB NATIONAL BANK LTD.

APPEARANCES: Shri Shanti Swarup Jain in person.
Shri Shani Lal Kathuria in person.
Shri M. R. Atri in person.
Shri Khairati Lal Manga in person.
Shri Shiv Lal Sharma in person.
Shri Shiv Dayal in person.

Shri A. C. Kakar, V. N. Sekhri, B. K. Porwal etc., for U.P. Bank Employees Union (appeared at Dehra Dun and Naini Tal)

Shri Somesh Chandra, District Manager, for the Bank (appeared at Kanpur and Dehra Dun)

Shri Om Prakash Gupta, Manager, for the Bank (appeared at Naini Tal).

(1) *Mahabir Prasad Garg*.—The facts as disclosed from his application briefly are these: He was working as a Cashier in the Punjab National Bank Khurja since 1945 under the guarantee of Messrs. Gurmukh Rai Basdeo Das. It so happened that the Cashier contractor resigned in August 1949 but the applicant continued to work, and applied to the Head Office to appoint him as Cashier contractor and agreed to deposit Rs. 5,000. But the Bank did not accede to his request and appointed a new cashier contractor *viz.* Shri Ram Kishan Kakkar. It was further stated that he was working independently after Messrs. Gurmukh Rai Basdeo Das resigned the post of cashier contractor and he should have been confirmed in that post *ipso facto*. The Bank's case on the other hand is that Shri Garg was working as a nominee of the contractor cashier Messrs. Gurmukh Rai Basdeo Das and on the resignation of the contractor, his services were to be terminated but the Bank allowed him to continue until a new contractor was appointed in order to absorb him. Subsequently, Shri Ram Kishan Kakkar who was a contractor of two other offices was appointed for this office also and Shri Garg was asked to continue under him as his nominee but he wanted to become contractor cashier himself and refused to work as a nominee of the new contractor cashier. The Bank, however, did not see their way to appoint him as contractor cashier as he was unable to deposit the requisite sum of Rs. 10,000 to the satisfaction of the Bank. It was further contended that the claim of Shri Garg to become a contractor cashier was not entertainable inasmuch as he could not become contractor cashier of his own accord. In regard to the offer of working as nominee of new contractor reliance was placed on a letter dated 22nd March 1950, (Ex.1) and it was urged that as the applicant refused to work as a nominee of the new contractor cashier his services were terminated on the 12th April 1950. The applicant moved this Tribunal by an application dated 15th March 1950, wherein no particulars of the case were given and reference was made to his application addressed to the District Manager, Punjab National Bank Ltd., Delhi dated 13th March 1950. Several letters and applications subsequently were also brought on this record reiterating the facts again and again with the prayer that he was prepared to deposit the requisite security for becoming contractor cashier and that the new contractor cashier was no better than him and the security taken from him does not come to Rs. 10,000 which amount was demanded from him. His case strictly speaking has been put in an application filed by the U.P. Bank Employees Union on his behalf dated 22nd April 1950 and this application should be treated as a statement of claim wherein the above facts have been mentioned with the following reliefs:

- (a) That he should be reinstated into his services as bank cashier w^t retrospective effect and his services should be treated as continued
- (b) That from 12-4-50 onward he should be paid full salary and allowances as compensation for the period he is made to remain under unemployment.
- (c) That all privileges of Provident Fund, Bonus for the intervening period be also granted to him

On the perusal of the pleadings as well as the other papers brought on the record, the case of the applicant in a nut shell is to the effect that he had worked independently for sometime when Messrs Gurmukh Rai Basdeo Das had resigned and that he should have been appointed as contractor cashier in place of the erstwhile treasurer. The position taken by the Bank on the contrary is that he was a man of insufficient means and was not prepared to deposit the requisite cash security of Rs. 10,000 and as such he could not be appointed as contractor cashier. He was, however, offered his original post and to work as a nominee of the new contractor cashier Shri Ram Krishan Kakkar by depositing a sum of Rs. 2,000; but he declined the offer and his services came to close.

In this connection, the Bank relied on a document dated 22nd March 1950 (Ex.1) which is reproduced as under

Ex.1

PUNJAB NATIONAL BANK LIMITED.

Ref No. T/280.

Khurja, 18th March 1950.

To

The District Manager.

Eastern Circle, H/O Delhi

Dear Sir,

Reg. Cashier at Branch Office, Khurja:

With reference to the endorsement No. DM/E-5133, on your letter dated 14-3-50, addressed to Shri Ram Krishan Kakkar, we beg to advise you that the undersigned has tried his level best to persuade Shri Mahabir Prasad Garg to deposit Rs. 2,000 as security and to become nominee of Shri Ram Krishan Kakkar but Mr. Garg has verbally refused to do so.

Please advise us further in the matter.

Yours faithfully,

(Sd.)

Manager.

Now it is too much to assume that what was stated in this communication was wholly wrong but the applicant in his rejoinder to the written statement of the Bank dated 24th May 1950, in paragraph 3 has stated as under:

"I was never asked to become a nominee of this new contractor cashier Mr. Kakkar. It would appear that I had been working independently; in the full knowledge and full confidence of the Bank authorities for more than 8 months since M/s. Gurmukh Rai Bas Deo Dass were relieved. I would have been confirmed *ipso facto* as a cashier in the strict sense of a Bank employee."

This part of statement be-speaks itself that the applicant wanted to become a cashier contractor and was not very keen to become a nominee of the new contractor cashier Shri Ram Krishan Kakkar; although he has stated that he was never asked to become a nominee which runs counter to the contents of Ex. 1. On the appraisement of all the facts and circumstances it seems clear to me that he was called upon to go to his original post but as he had worked for some period independently he wanted to take the dignified position of the contractor cashier and declined to become the nominee of the contractor. The Bank, however, in their order of discharge has not stated in so many words that he had vacated his post which was offered to him but as he was allowed to continue after the resignation of Messrs Gurmukh Rai Basdeo Das, it could be safely inferred that the Bank wanted to retain his services. In these circumstances the applicant appears to have arrogated to get the post of contractor cashier on the score of having filled the post of contractor cashier for some time on the resignation of Messrs Gurmukh Rai Basdeo Das and this position obviously was untenable. It is unintelligible as to how he could become a contractor cashier unilaterally so long the Bank authority also did not agree to confide in him. Reference was made on behalf of the applicant to the case of one Madan Lal Sharma of Hathras Branch decided by the All India Industrial Tribunal (Bank Disputes), Bombay. The facts of that case, however, are distinguishable. In Sharma's case the applicant moved the Labour Commissioner and the Bank as a retaliatory measure discharged him from service. The letter of dismissal moreover was given by the Treasurer as an extraordinary procedure and the employee was not treated as Bank employee. But in this case the facts

are different as given above and the decision relied upon by way of analogy is not in point. In this case it was a higher job and the promotion could only be attained with the consent of the other side. The claim accordingly, if it is for his reinstatement as a contractor cashier on which post he worked temporarily in the absence of the new contractor cashier is untenable and must fail. Regarding his original post as a nominee under the contractor which also required a security of Rs. 2,000 in the absence of good cogent evidence that he vacated the post, it would be safer to give him one more opportunity to join this post as nominee under the contractor cashier if so desired. He will, however, not be paid any back salary for the intervening period in the light of all the circumstances mentioned above. The other reason for not allowing is that his claim virtually is still for reinstatement as a contractor cashier on which he worked as a make-shift arrangement for sometime. In the result the Bank is directed to take him back in service on his original post as the nominee of the cashier contractor in the cash department within one month from the date when the award becomes effective, if he is willing to join.

(2) *Narottam Das Misra*.—His case is that he was working as an Assistant Cashier in Hazratganj Branch and a shortage of Rs. 1,000 took place due to some mistake of one Tandon, Assistant Payment Cashier and that he was not connected with that shortage. The Bank, however, dispensed with his services on the 30th September 1949 without giving him a month's notice or one month's salary in lieu of notice. It was also claimed that an overtime allowance was also due to him from the Bank. The relief, however, asked for was only for payment of one month's salary and overtime. Shri Somesh Chandra on behalf of the Bank replied that so far the allowance for overtime was concerned that has already been paid to him. Regarding one month's notice before the termination of service or payment of one month's salary in lieu of notice, the Bank representative contended that the services of the applicant came to close on the basis of misconduct and as such he was not entitled to one month's salary in lieu of notice. Shri Somesh Chandra, however, admitted that no enquiry was made by the Bank and the matter was left to the contractor Cashier, who having made proper enquiry into the matter came to the conclusion that the applicant was responsible for the shortage. Now so far the charge of misconduct is concerned, the applicant was neither charge sheeted nor it is clear on the record as to whether he was asked to submit any written explanation and to meet the charge. It appears that the contractor cashier made some verbal enquiries and held him responsible for the shortage. The applicant has not asked for reinstatement and the demand is confined only to the payment of one month's salary as borne out from the statement of claim. It is just possible that he may have been re-employed or he is conscious of the charge levelled against him. The sole question for determination is as to whether he was entitled to one month's notice or one month's salary in lieu of notice when the Bank authority did not avail of the proper procedure laid down for enquiry into cases of misconduct. In the light of the basic principle that every offender is entitled to an opportunity of meeting the charge and full enquiry by a competent authority I feel inclined to hold that one month's salary in lieu of notice should have been paid to him. In the result the claim is allowed and the Bank is directed to pay the applicant one month's salary including allowances which he was drawing at the time of discharge within one month from the date when the award becomes operative.

(3) *Santi Swarup Jain*.—His grievance is that he joined the Bank's service in June 1946 and although he put in six months service yet he was not confirmed and ultimately his services were terminated on the 30th October 1947 without assigning any good reason. The applicant thereupon moved the Labour Commissioner and on his intervention he was taken back in service and was posted at Shahjehanpur. It so happened that he fell ill and applied for leave which was not granted and on recovery after a period of about six months he joined his duty on the 19th July 1948 but was not allowed to take up work. It was contended that his case was one of victimization and the Bank in a vindictive manner flouted the agreement arrived at before the Labour Commissioner whereby he was taken back in service in October 1948. The claim was resisted by the Bank and the first contention raised in this connection was that the matter had already been tried by the All India Industrial Tribunal (Bank Disputes), Bombay and award in his case was published in the Gazette of India dated 18th February 1950 whereby it was decided that it was not a case of victimization and no award was needed. On merits Shri Somesh Chandra further argued that Shri Jain absented himself for about six months without having applied for leave and everytime he was asked to join but he did not comply. It was emphasised that he did not like to go to Shahjehanpur and in point of fact has taken up another employment as a teacher in a Vidyalaya.

Shri Jain admitted that he had moved in the first instance to the All India Industrial Tribunal (Bank Disputes), Bombay, but his case was not decided on merits and the present application was not a bar for the purpose of adjudication. Now his

case as reported at page 264 of the award reveals that the said Tribunal actually entered into the facts of the case and rejected his claim. Some extracts from the award may well be reproduced to show that the decision was made on merits and not on any legal objection:

"His case is that he fell ill in January 1949 and applied for leave on medical grounds. He was asked to join duty on 21st March 1949 but on account of the state of his health he could not join and he explained his inability to the Bank.....He made a representation to the District Manager, Eastern Circle, who permitted him to join at Shahjehanpur but he did not join there. He is working at present in S.S. Vidyalaya, Hathras. He was asked again by the Manager on 4th October 1949 and 15th October 1949 to join within a fortnight but he did not do so. It seems clear that this is not a case of victimisation and no order need be made."

The above quotation from the award clinches the matter beyond any manner of doubt that the case was decided on merits. It was a frivolous claim and appears to have been preferred without any justification. The same must be dismissed.

(4) *Kashmiri Lal*.—His grievance is that the graded increment and bonus was withheld in his case and some charges were levelled against him whereby he suffered in reputation. Shri Somesh Chandra in reply submitted that his complaint was already heard by the All India Industrial Tribunal (Bank Disputes), Bombay, and in terms of the agreement his increment was released and he was transferred from Ferrukhabad to Bareilly and that a new claim on the same plea cannot be entertained. Reliance was placed on Exhibit 1 (a copy of the agreement) and the operative portion reads as follows:

"The points at issue between the parties have been amicably settled. The employee will obey the orders of the Bank transferring him to Bareilly and after joining at Bareilly he will apply to the Bank for the withheld increments and other claims which the Bank will consider sympathetically. There is no need for any direction in this matter."

Shri Somesh Chandra has unequivocally stated that the increment withheld was subsequently released which amounts to the compliance of the agreement and the claim appears to be misconceived and must fail. The same is dismissed.

(5) *Kasturilal Nagpal*.—The complaint of this employee is that he was transferred from Delhi to Hathras; and in consequence of transfer the amount of his Dearness Allowance was reduced from Rs. 35 to Rs. 25-2 per mensem. It was claimed that he was entitled to Dearness Allowance which he was drawing at Delhi and the same may be released in his case. Shri Somesh Chandra on behalf of the Bank raised a preliminary objection that his case does not fall within the items mentioned in the Schedule and as such was not triable by this Tribunal. On merits it was contended that the transfer from Delhi to Hathras was made on his own request as evidence from the copy of the letter dated 8th April 1949 (Ex. 1) and he was amenable to the service rules prevailing in Uttar Pradesh according to the B. B. Singh award. It was urged that under the terms of U.P. award Dearness Allowance was fixed at 30 per cent. of basic salary with a minimum of Rs. 25; and in his case as he was drawing Rs. 67 per mensem as basic salary, his Dearness Allowance was reduced to Rs. 25-2-0. It was further argued that although the applicant had suffered in this respect, yet he became recipient of other benefits which are accrueable to U.P. employees according to B. B. Singh award.

Now the applicant was transferred from Delhi to Hathras on his own request and consequently became amenable to the local adjustment of that State so far Dearness Allowance was concerned. In the circumstances the principle laid down in rule 10 of the Conciliation Board award does not apply in his case and no interference is called for. The result is that the claim fails and is dismissed.

(6) *Ram Kharosey*.—The applicant joined the Bank's service in 1944 as a Peon. He was promoted as Daftry and confirmed in 1947. His case is that in the Branches of Punjab National Bank, Daftries are always required to do the duties of Record-keeper and he too worked as such for a pretty long time. It was claimed that in terms of the U.P. Conciliation Board (Banks) Award, Record keepers are entitled to clerical cadre. The applicant also made a claim to that effect but the management refused to take him in the clerical cadre. It was prayed that he be taken to the clerical cadre with retrospective effect from 1st November 1947 with all benefits attending thereto.

The claim was resisted by the Bank and it was contended on their behalf by Shri Somesh Chandra that the applicant was not maintaining the records but only used to handle them as a Daftry. The argument was further stressed that the

work which he has stated in paragraph 2 of his application does not fall within the duties of a Record keeper but that of a Daftary. Reliance was placed on page 18 of the Conciliation Board (Banks) Award, 1949 wherein the duties of Daftaries are defined in paragraph 24. It was maintained on the strength of that authority that even on his own admission the work entrusted to him does not bring him within the definition of Record keeper and as such he could not be promoted to the post of clerk. It was also contended that the cause of action arose before 13th June 1949 which is a *terminus qua* for hearing cases under this Reference.

Now the cause of action obviously arose earlier than 13th June 1949 and does not fall within the ambit of the Reference. The claim fails on this short ground and on merits also as explained above in the argument of the Bank Representative, I am of the opinion that the applicant was dealing with the filing and indexing of circulars, vouchers etc. in the capacity of a Daftary and that by itself did not entitle him to be taken in the clerical cadre as prayed for. The claim fails and is disallowed.

(7) *R. D. Agrawal*.—The applicant as disclosed from his application joined the Bank's service as a clerk and was given special increments and was doing very well but it so happened that certain flimsy charges were levelled against him and his annual increment was withheld for the year 1949. His other grievance is with regard to his transfer. Shri Somesh Chandra on behalf of the Bank has stated that the increment had already been released in his favour and so far the transfer was concerned he had submitted to that and took up work at the place where he was transferred.

The only question accordingly is as to whether the applicant has consented to the order of transfer. He has stated in his application that the transfer was based on the ground of certain charges levelled against him which were found flimsy by the Regional Labour Commissioner. The Bank representative on the contrary maintained that serious charges were levelled against the applicant; but on the intervention of the Regional Labour Commissioner, the applicant submitted to the transfer order and the Bank did not press the same. In view of the fact that the transfer was made in the same State and the applicant had already joined there I see no good reason to interfere in the matter of transfer with the result that the claim is disallowed.

(8) *Munshi Lal*.—The facts of this case are short and simple. Shri Munshi Lal joined the Bank's service as a Chowkidar in Debai Pay Office in the year 1943. He continued for some years and it so happened that the pay office was closed in 1949 and his services *ipso facto* came to close. The particulars of his case were not given in the application and the Secretary, U.P. Bank Employees Union, only mentioned his name along with several other cases and stated that his case was of unjustifiable retrenchment.

Shri Somesh Chandra, Bank representative, opposed the claim on merits and stated that on the closing of the Pay Office in question, the services of Shri Munshi Lal, who was engaged temporarily to guard the premises as a Chowkidar were terminated as the work came to close. Shri Somesh Chandra also raised a preliminary objection that the cause of action arose in May 1949 and as such did not fall within the ambit of the Reference which deals with the causes which arose after 13th June 1949. The claim fails on the legal objection and the same is disallowed.

(9) *Padam Chand Jain*. } This claim was jointly preferred through the U.P.
(10) *Kshetra Pal Sharma*. } Bank Employees Union and the written statement of the Bank was also the one and the same.

The case is that the Punjab National Bank had been paying special increment to its employees of Rs. 10 and Rs. 15 for passing Part I and Part II of the Indian Institute of Bankers Examination since long; but the Bank has now stopped granting this allowance with effect from the year 1949 by a Circular of 6th June 1948. The applicant passed the examination in July 1949 and he was offered only a lump sum of Rs. 75 instead of the special increment of Rs. 10. It was alleged *inter alia* that this action was contrary to the findings of B. B. Singh's Award as well as the findings of the U.P. Conciliation Board (Banks) Award published in paras. 24 and 34 respectively of the award. It was further alleged that the matter was referred to the Conciliation Officer who passed an order on the 8th November 1949 on this subject but the same has not been implemented by the Bank; hence the claim.

The Bank representative, in reply, submitted that the usual practice with the Punjab National Bank was to grant special increment which was stopped in order

to bring the practice in uniformity with other Banks. This special increment was converted into lump sum bonus. Shri Somesh Chandra frankly admitted that this U.P. case in the light of B. B. Singh Award and U.P. Conciliation Board Award is distinguishable but contended that in the first award this matter did not form the subject of Reference and the observations made by Shri B. B. Singh in his award were thus *obiter dicta* and cannot have the force of an authority. In the case of the Conciliation Board Award it was argued that the matter did come before the Board in the form of an Issue No. 34 but it only related to persons who had already become the recipient of that allowance and it was not a general proposition which should be applied now even in the case of those who passed the examination afterwards or would pass now. Reference was made to the wording of Issue 34 at page 50 and the decision or the observation made at page 23 and 24 of the U.P. Conciliation Board (Banks) Award, 1949.

The question regarding the payment of special allowance for passing the Indian Institute of Bankers Examination was dealt with by me in Delhi Bank Disputes Award on the application of Shri Dharam Vir Taneja, Secretary, Punjab National Bank Workmen's Union, Delhi, and on hearing both sides on the merits of the case it was held that as the circular issued by the Bank authorities was not a bye-law binding upon the Bank and could be reviewed; no interference was called for in the matter. But in the case of the employees of U.P. State, who are governed by B. B. Singh Award and Conciliation Board Award, the matter stands on a different footing. This point was considered in Issue No. 34 under the heading 'Allowances for Passing Bankers Institute Examination' and the finding of the Conciliation Board in view of its importance is quoted as under.

33. Issue No. 34.—Allowance for passing Banker's Institute Examination.

"Banks usually allow a special increment or allowance for passing the Bankers' Institute Examination or possessing any other prescribed qualification. That is clearly a special pay or allowance for possessing certain technical qualifications higher than a normal employee. The scale of pay prescribed by Shri B. B. Singh was the minimum for normal employees of average ordinary qualifications. He did not mention in his Award that such special pay or allowance will be absorbed in fixing salary according to the grades prescribed by him. On the other hand, in para. 24 of his Award he expressly said that such allowance should continue. By this he meant that it was to continue both to those who had acquired such qualification prior to the Award and to those who acquired afterwards. It would be discouraging the employees from acquiring these additional qualifications and detrimental to efficiency if this special pay or allowance is stopped. I hold that such special pay or allowance should continue and the banks should not be allowed to absorb them in the new scales of pay prescribed by Shri B. B. Singh. If any bank has so absorbed it, it should pay the arrears to the employee with effect from January 1, 1947."

In the light of this dictum the position taken up by Shri Somesh Chandra on behalf of the Bank becomes untenable and the employees of Uttar Pradesh will be entitled to the special allowance. I would, therefore, direct the Bank to restore this special allowance of Rs. 16 and Rs. 15 for passing Part I and Part II of the Institute of Bankers' Examination respectively in compliance with the terms of the Conciliation Board Award with effect from August 1949, the date when the result of the employees in question viz. Shri Padam Chand Jain and Shri Kshetra Pal Sharma was declared within one month from the date of the publication of the award.

(11) *Bansi Lal*.—No individual application was placed on the record in the case of Shri Bansi Lal and the reference was made in a joint statement of claim filed by the U.P. Bank Employees Union wherein against the name of Shri Bansi Lal in the column of remarks the relevance was mentioned to the effect that his salary was reduced and bonus and increments were stopped. Shri Somesh Chandra on behalf of the Bank gave further facts and stated that Bansi Lal was appointed as a Peon on the 17th June 1937 and subsequently promoted as second Daftary at Nayaganj (Kanpur) Branch in 1946. He, however, claimed sometime after that he was also doing the work of indexing etc. and that he should be taken to the clerk's cadre. He also moved the All India Industrial Tribunal (Bank Disputes) Bombay, and the request was acceded and he was taken into the clerks cadre and the increment was released. A copy of the award was placed on the record (Ex. 1).

In the light of the statement of Shri Somesh Chandra, Bank representative, the matter needs no adjudication and it appears that this application was made

simultaneously before this Tribunal as well as before the All India Industrial Tribunal (Bank Disputes), Bombay.

(12) *Behari Lal Dutta*.—He joined the Bank's service in May 1940 as a Senior Grade Clerk and gradually rose to the position of a Branch Manager. He was confirmed in his post in 1946 and acted as Manager and Sub Manager in various places. He was once sent at Fyzabad Sub Pay Office and some correspondence between him and the Managers of branches was addressed as Accountant-in-charge as evidenced from some of the letters mentioned in the application itself. His services, however, were terminated without any reason or any fault on his part and it was alleged that under the above circumstances the Bank violated the legal provision of Section 33 of the Act and he was entitled to reinstatement on payment of full arrears of pay and allowances.

Shri Somesh Chandra on behalf of the Bank in reply raised a preliminary objection to the effect that Shri Dutta was an officer of the Bank and his case did not fall within the ambit of the definition of workman under section 2(s) and the Tribunal was not competent to try this case. In this respect it was further argued that he entered into a covenant dated 24th December 1942 for 12 years wherein he was mentioned as 'an officer' in paragraph '1' of the Agreement. That he actually worked as Manager in 1945 and was confirmed in 1946. It was next urged that it was not correct on his part to say that he was designated as Accountant-in-charge at Faizabad. The hard fact is that on 19th December 1949 Faizabad Sub Branch was converted into pay office and Shri Dutta continued to carry on for some time until the Accountant-in-charge took over from him. It so happened that in the course of his continuance at Faizabad the period of his agreement expired and his services came to an end. His permanent post was that of Manager and as such he was an officer. The allegation made in his application that he was addressed as an Accountant-in-charge was not exactly so because the head office knew his designation and if any one of the Branch Managers had addressed him as Accountant-in-charge that did not change his permanent status.

On the perusal of the agreement where the word 'officer' is used against the name of the applicant and the admission of the applicant that he had worked as Sub-Manager of Fyzabad Branch, the only question for determination is as to whether Shri Dutta falls within the definition of 'workman'. The record further reveals that he was also tried at Kasganj and Ferrukhabad as Manager but he could not make success. There was a charge against him of having made some unauthorised advances also, upon which some evidence was led by the Bank. It appears that he remained incharge of more than one branches but as he could not run the branch successfully and when he was in charge of accounts at Fyzabad Pay Office his covenant expired meanwhile on the 23rd December 1949 and when he was discharged from service

Without entering into the charges levelled against him for having made unauthorised advances, I am satisfied from the evidence brought on the record that he had been working as Manager and furthermore according to the covenant his services were taken as an Officer and if at any time he was called incharge of Accounts by any one of the Manager of the Branches, that cannot be accepted as a hard fact that he was made accountant. The head office always treated him as an officer. In the result I am of the opinion that he does not fulfil the conditions of 'workman' as laid down in Section 2(s) of the Act and his claim falls on this ground and the same is dismissed.

(13) *Laxmi Narayan* and (14) *Durga Prasad*.—In the case of these two employees the General Secretary, U.P. Bank Employees Union did not bring on the record any particular complaint giving facts and particulars and in his letter dated 4th April 1950 had only stated that a list of some cases was being sent for information and necessary action and that petitions of individuals will be submitted in due course. The individual petitions, however, were never submitted, so far these two employees were concerned, and the facts are to be gathered from the written statement of the Bank.

Shri Somesh Chandra, Bank representative, was asked to state the facts both ways as this case was also taken up *in absentia* as per note above. It was stated that both these persons were nominees of Messrs. Kapoor Brothers, contractor cashier. It so happened that the contractor cashier was involved in debts and his services to the Bank came to close and these nominees had also to go. They, however, represented to the Bank for some relief for the abrupt termination of their services and accordingly one month's salary was granted to them. Reliance was placed on the representation made by Shri Durga Prasad

to the Bank wherein he asked for one month's salary according to rules as well as a copy of letter dated 15th March 1950 from the Regional Labour Commissioner addressed to the Branch Office Mathura regarding the case of Durga Prosad and Laxmi Narayan, Assistant Cashier, whereby the Bank was directed to pay the employees one month's salary and also to refund the Provident Fund money together with leave salary if due to them. Shri Somesh Chandra has stated that one month's salary has since been paid to them, but no reference was made to the payment of Provident Fund or the amount of the security. In view of the fact that no claim has been made regarding Provident Fund etc. the same must have been refunded to them. In case it has not yet been refunded the Bank is directed to pay them the Provident Fund money (with Bank's contribution) as well as the Security deposit if lying with the Bank.

(15) *Naubat Rai*.—In this case also no individual claim was filed and only a reference was made to this case also in the list forwarded with the General Secretary, U.P. Bank Employees Union's letter dated 4th April 1950. For want of particulars the Bank representative was called upon to give the facts both ways.

Shri Somesh Chandra submitted that Shri Naubat Rai was appointed as a godown guard at Mathura to supervise the godowns of Messrs Palson Soap Mills, Company and on the adjustment of the stocks of that Company his services became surplus and he was discharged. It was further stated that he was a temporary employee and had no claim for confirmation as his services were engaged for a particular period and the Bank had to terminate his services on the close of the work. It was next urged that he represented his case before the Conciliation Officer who went into the merits of the case and came to the conclusion that he was a temporary employee and his discharge was not wrongful. Reference was made to the copy of the order attached with the written statement (Ex.1) as well as Naubat Rai's application (Ex.2), whereby the representation of Shri Naubat Rai was rejected by the Conciliation Officer as he was treated as a temporary hand. This furnishes a complete answer to the claim which is accordingly dismissed.

(16) *Prayag Singh*.—The case of this employee as disclosed from the claim dated 6th June 1950 briefly is that he was beaten by the Manager on the 4th July 1949 and his services were terminated on the 16th January 1950 without assigning any reason. No other fact was mentioned. The Bank representative however in reply stated that Prayag Singh was a Chowkidar and joined the Bank's service in 1943. He was a retired Policeman having retired in 1938 and as he happened to be very old and was slack in his duty, he was examined by the Civil Surgeon, Sitapur. The medical opinion was that he had become aged and he could not cope with the duties of a Chowkidar and the Bank was thus constrained to terminate his services and the permission to that effect was obtained from the Labour Commissioner U.P. vide copy of letter dated 9th January 1950 (Ex.1) and another copy of letter dated 18th December 1949 (Ex.2).

Now the report of the Civil Surgeon Sitapur dated 18th December 1949 (Ex.2) reads as follows:

"Reference your letter No. Nil, dated 16th instant. I examined Shri Prayag Singh Guard today and find that he is not fit for further service as a Guard. He is about sixty years of age...."

The case accordingly is covered by the age of superannuation and no interference is called for.

(17) *Ram Dayal*.—His case is that he was an old employee of the Bank but as he condemned the conduct of the Manager of beating Prayag Singh, Chowkidar, the local Manager was annoyed and became inimical to him and he was all of a sudden discharged from service on 31st October under the plea of forced retirement. It was alleged that his was a case of victimization as he became a victim of having sympathy with Prayag Singh. It was also alleged that he was neither charge-sheeted nor given any opportunity for explanation and the case was covered under the provisions of Section 33 as no permission was obtained.

Shri Somesh Chandra on behalf of the Bank denied the allegation made in the application on behalf of the applicant and stated that the termination of his service was purely due to superannuation as he had become 55. On merits it was further argued that according to his own statement Shri Prayag Singh was alleged to have been beaten on 4th July 1949 whereas notice was served upon this man on 19th March 1949 and as such the allegation is obviously false. It was, however, admitted that no permission was obtained but it was maintained that the same was not necessary as it was not a case of dismissal or discharge.

from service but one of purely retirement. A copy of the order pertaining to his retirement (Ex. 1) was produced as well as notice (Ex. 2).

This again is purely a case of retirement as evidenced from the copy of order (Ex. 1) and does not call for any interference.

(18) *Roshan Lal Talwar*.—The applicant joined the Punjab National Bank in 1923 as an unpaid probationer and was confirmed subsequently as a clerk on Rs. 40 in May 1924. He was promoted to the post of Manager in recognition of his hard good work and he was drawing a salary of Rs. 200. He was, however, transferred in 1947 to Delhi and then to Banaras in 1948. On 7th February 1950 he was relieved as his services were terminated without assigning any reason. It was alleged *inter alia* that his discharge from service was due to his Trade Union activities and this was a case of victimization as he was thrown out of employment without any reason. Replying to the objection that he was not a workman it was stated that he was no doubt working as Manager but he had no power to dismiss or recruit any employee and his duties were not of directional nature. He had only the control to carry out the orders of the superiors and departmental heads concerned. The relief sought was for reinstatement and payment of emoluments for the intervening period.

A preliminary objection was raised by the Bank's side that the subject was an 'officer' and does not satisfy the definition of 'workman' and his case was not triable by this Tribunal. On merits it was stated that Shri Talwar began to work as Manager in 1939 and in the year 1942 he entered into an agreement with the Bank for 7 years and on the expiry of that period, the Bank did not like to renew that agreement. Reverting to the first objection, reference was made to the agreement wherein the applicant was stated as 'officer'. Shri Somesh Chandra further argued that he was holding powers of attorney and as a matter of fact had all the controlling powers. Reliance was placed on the copy of the agreement (Ex. 1) and powers of attorney (Ex. 2) already filed with the written statement.

Now so far the agreement (Ex. 1) is concerned the same was executed in 1942 when some of the employees wanted to join Bharat Bank which had just started and the Bank secured the services of some of their employees in terms of an agreement for 7 years. I have already held in Delhi and Punjab awards that those who entered into this covenant in 1942 did not execute the agreement on their own asking but it was on the seeking of the Bank authorities in order to check the exodus of the competent employees in those days of boom when more than one Bank came into field. I would not therefore attach any importance to this agreement and on merits I am of the opinion that an employee who had put in about 25 years service could not be shunted off on the foot of such agreement.

His personal file was sent for to scrutinize into the case further and on going through that record I find that he joined the Bank's service on the 21st May 1924 as a clerk on a salary of Rs. 40 per month at the Head Office. He worked as Sub-Manager of Moradabad Branch and subsequently rose to the post of Manager and worked at more than one branches. In the year 1948 he was working as Manager of Banaras branch and until then as revealed by his personal record his work was quite satisfactory and in the column of punishment record, the word used was "clean". He was drawing Rs. 455 as salary and the confidential remarks in regard to his work showed him as an experienced officer who could tactfully control staff and could create business connections with the customers. A report dated 10/8/49 of the District Manager, however, shows that his covenant period was to expire on the 20th November 1949 and in August 1949 when this report was submitted by the District Manager to the higher authorities business at Banaras had shinked. This fall in deposits was attributed to the lack of popularity of the Branch as compared with the general popularity of the institution at other places. The District Manager accordingly in his report proposed that as his covenant was to expire on the 20th November 1949 he should be paid salary for the unexpired period of the covenant and full Provident Fund and another man be sent in his place. The correspondence went on for sometimes and ultimately it was on the 8th January 1950 when effect was given to the proposal and his services came to close. As observed above I am of the considered opinion that the order of termination of service was not justified in the case of an old employee who had put in honest service of more than two decades on the foot of an agreement of 1942. On merits therefore his case should succeed but I am afraid that he worked admittedly as Manager in more than one branches and as such he was an officer and does not satisfy the definition of workman as held by me in the Delhi Bank Disputes award. In the result the case falls on the legal ground and is disallowed.

(19) *Hriday Mohan Aran.*—This claim was not pressed and the same is filed.

(20) *Radha Saran Seth.*—His case is that before joining the service of Punjab National Bank he was with the Allahabad Bank for more than 20 years and joined the Punjab National Bank as Manager in the year 1943 on contractual basis. It was further alleged *inter alia* that 5 years contract expired on 12th May 1948 and he was made to execute the ordinary service agreement again on 27th January 1949 and the Bank treated this as a fresh agreement. He fell ill soon after and had to apply for leave. During this leave period the Bank management served him with a notice terminating his services without assigning any reason. It was contended that his discharge at this ripe age ignoring all his previous experience, good efficient service etc. amounted to gross injustice and highhandedness on the part of the management. The relief sought was for reinstatement with retrospective effect, payment of full salary and other emoluments for the intervening period, leave salary, bonus contribution and a compensation of Rs. 1,000 for the mental worry on account of his unjustifiable discharge from service.

Shri Somesh Chandra on behalf of the Bank in reply submitted that Shri Seth entered the service by a covenant in the capacity of Manager for 5 years. On the expiry of that period the Bank was within its rules to renew the agreement or to terminate his services by giving one month's notice and as such the applicant could not claim continuation of service. Reliance was placed on the agreement (Ex. 1), a copy of which was attached with the written statement. Subsequently he entered into another agreement (Ex. 2) and within the four corners of that agreement his services could be terminated on one month's notice. Specific reference was made to clause 4(b) of the agreement (Ex. 2). The other legal objection raised by the Bank was that he was an officer and does not fall within the definition of Section 2(s). He had all the directional and controlling powers as Manager and his case is not triable by the Tribunal. It was further argued that the applicant was charged with certain accusations about unauthorised advances and reference was made to office communication dated 5th April 1949 (Ex. 3) wherein he was called upon to take immediate step to bring down the shortage and regularise the debit balance as well as to explain why his services should not be dispensed with for being risky and unauthorised business and further reference was made to office communication dated 10th August 1949 (Ex. 4). Finally, it was stated that he was given full Provident Fund and security deposit was refunded to him and he received the amount without protest.

This is also a hard case but on merits it is covered under a covenant and furthermore the applicant was admittedly working as Manager and as such was an officer as held in Delhi Bank Disputes award. The claim accordingly fails on both counts and the same is dismissed.

(21) *Bharat Kishore Srivastava.*—His claim relates to the non-payment of bonus and the arrears of increment. The Bank representative averred that the same had already been paid as borne out by their supplementary written statement dated 3rd June 1950. The claim having been satisfied needs no adjudication.

(22) *Harish Chandra Bajpal.*—A joint application was held through the U.P. Bank Employees Union in the first instance wherein no particulars of their complaint regarding each individual case were given. The Bank in written reply opposed the application on the plea that the same was vague and indefinite and did not disclose any grounds of claim. Another claim was filed on behalf of Shri Bajpal and the facts disclosed shortly stated are as follows: He joined the Bank's service as stenographer-cum-clerk on Rs. 60 plus Dearness Allowance and later on was confirmed in this post in December 1947. His salary was raised from Rs. 60 to Rs. 75 in pursuance of U.P. Conciliation Board Award (Banks) with effect from the date of confirmation and he was paid the arrears of the salary as well as bonus up to 31st December 1948 evidenced from annexure 'B' attached with the application. No claim was taken by the Head Office for about 6 months but the District Manager, Eastern Circle, as borne out by his letter dated 26th November 1949 (Annexure C) did not agree to the payment of arrears on the ground that in terms of the Conciliation Board award, the arrears of salary were only to be paid to the Stenographer and salary was to be raised from Rs. 60 to Rs. 75 from the date of the award. He was accordingly called upon to refund the amount before the closing of the half year i.e., up to 31st December 1949. He submitted under duress to this decision and agreed to a deduction of Rs. 50 from his pay monthly to adjust the excess amount paid to him. Since then Rs. 50 were being deducted from his salary every month as evidenced from Annexures G and H. The relief sought for was for the restoration of the amount

which has been deducted from his salary and to direct the management not to harass him in this manner.

Shri Somesh Chandra while admitting the facts substantially vehemently contended that Shri Bajpai was not entitled to the starting salary of Rs. 75 under the terms of B. B. Singh award and any reference in the Conciliation Board award in that respect was *obiter dicta* and as such was not binding. It was further argued that the Bank had already increased his salary and had paid him in terms of Conciliation Board award from 1st May 1949 and the amount of salary deducted from his salary or which is still due and is to be recovered cannot be refunded to him. Lastly, it was urged that the claim relates to the implementation of certain award and does not fall within the ambit of the Reference also.

On the appreciation of the facts stated above it seems clear to me that the management in compliance with the terms of the award called upon Shri Bajpai to refund the amount and he agreed to a deduction of Rs. 50 per month to adjust the excess amount paid to him. The plea raised now in the claim is that he did not agree to the deduction on his free will but the same was brought about under duress. He has not, however, disclosed the particulars of such duress or undue influence wrought upon him in his application and it is difficult to act upon merely on allegation after a pretty long time. I am, therefore, constrained to come to the conclusion that no case has been made out for the restoration of the amount claimed for and the same is disallowed.

(23) *Sheo Dhan Singh*.—His grievance is as stated in the application that he was transferred to Bareilly against his will in order to deter him from taking active part in Trade Union activities. He asked for re-transfer in his previous place and compensation for suffering. The Bank representative brought into the notice of the Tribunal that the applicant had by this time died and the question of re-transfer does not arise. I am afraid the question of compensation also on the foot of transfer against the wishes of any one of the employee does not fall within the ambit of the Reference and furthermore is not warranted by the facts of the case when the transfer was made within the same state of Uttar Pradesh. The claim is accordingly dismissed.

(24) *Shadi Lal Kapoor*.—The case of the applicant put briefly is that he had passed the Institute of Bankers Examination and under the circular of the Bank was entitled to special increment of Rs. 10 for qualifying himself but the Bank changed its rules and decided to pay a lump sum in shape of bonus instead of special increment. Despite repeated requests the Bank refused to pay him the special increment to which he was entitled and the same may be released.

Shri Somesh Chandra in reply submitted that the Bank made a change in the mode of reward for qualifying in 1948 whereas the applicant had qualified himself in the year 1949. It was maintained that he was accordingly governed by the new rules and no cause of action arose in his case. Replying to the contention that the applicant was entitled to the special increment on the basis of B. B. Singh award as well as Conciliation Board award, Shri Somesh Chandra contended that the finding of the first award was *obiter dicta* inasmuch as there was no reference on this point by B. B. Singh and Reference was made to Issue No. 34 and the decision arrived at in connection with the second award. The argument was further stressed that even if the matter was taken up by the Conciliation Board still it did not improve the matter and could not form a finding inasmuch as the matter was not originally under Reference and as such it was *ultra vires*.

The point involved has already been considered in the case of Shri Padam Chand Jain and Khetra Pal Sharma in this award (Nos. 9 and 10). The question of special allowance for passing Institute of Banker's Examination were also fully discussed in Issue No. 34 of the Conciliation Board award and it is futile to urge that the same was not referred to the Board. Shri B. B. Singh furthermore in para. 24 of the award had expressly said that such allowance should continue and by this as observed by the Conciliation Board he meant that it was to continue both to those who have acquired such qualification prior to the award and afterwards. At any rate the Conciliation Board came to the conclusion that such special pay or allowance should continue and the Banks could not be allowed to absorb them in the new scale of pay prescribed by Shri B. B. Singh. It was further held that if any Bank has so absorbed, it should pay the arrears to the employees. In the light of this finding which holds good in the case of U.P. employees, I feel inclined to hold that the applicant is entitled to the special allowance claimed for and the Bank is directed to grant the increment of Rs. 10 per mensem from the date of passing the examination in terms of the award to the applicant within one month from the date when the award becomes operative.

(25) *Ram Chandra Maheshwary*.—His grievance is that he was working as Head Cashier, Kasganj Branch, since December 1944; but all of a sudden he was made an Assistant Cashier and was thus degraded in status. It was further alleged that he was victimized by demotion on account of availing a long leave; and his annual increment was also stopped and bonus was not given. It was further alleged that all this was done vindictively on account of his Trade Union activities. He wants to be restored to the post of head cashier with retrospective effect as well as the release of his graded increment, efficiency allowance etc.

Shri Somesh Chandra in reply stated that he was a nominee of the contractor cashier and as he went on long leave the contractor cashier called upon him to report at Ferrukhabad on expiry of the leave in the capacity of Head Cashier but he did not join at Ferrukhabad. He did not join Ferrukhabad and when he joined his duty after expiry of leave he was posted as Assistant Cashier as he was already informed that in case he failed to join there he will be taken as Assistant Cashier on the same emoluments as evidenced from Ex. I. Lastly, it was urged that there has been no change in his emoluments and the case does not amount to change in conditions of service or of demotion.

The sole point for determination is as to whether it is a case of demotion on the facts disclosed above. There has been no change admittedly in the emoluments of the applicant. He has, however, been made an Assistant Cashier as he failed to join at Ferrukhabad as evidenced from a copy of letter dated 14th November 1950 (Ex. I). This document indicates that Shri Maheshwary was transferred to Ferrukhabad as Head Cashier but he explained the management about his difficulties in leaving Kasganj and wanted to remain as Assistant Cashier at Kasganj. It appears that the applicant subsequently realised the position that by having agreed to remain as Assistant Cashier he had lost the opportunity of becoming the Head Cashier. The claim as disclosed by the application was based on the plea of Trade Union activities but the facts as revealed from the record do not indicate at all that any action was taken against the applicant on the score of his Trade Union activities. It appears that now when he realized that his status has been lowered by accepting the post of Assistant Cashier, he tried to take shelter under the plea of Trade Unionism. I need hardly add that false plea in the eye of law resorted by any one generally nonsuits him as one who seeks equity from Court must come also with clean hands. Judged from this principle the applicant has no legs to stand and I am also of the opinion that when the change in designation was made with his consent and no change occurred in his emoluments, case for demotion was not proved. In the result the claim stands dismissed.

(26) *Mahendra Singh*.—His case is that he was appointed as a Hundi Presenter cum Cashier in Muzaffarnagar city on a permanent post in March 1949 and had been working to the satisfaction of the Bank officers. His confirmation on the expiry of 6 months fell due on 1-9-49 in terms of the Bank Conciliation Board award (Issue No. 87); his case was sent up to the Head Office by the Local Manager for confirmation; but the head office authorities refused to confirm him on account of their vindictive policy. He was therefore deprived of security and privileges of service. He wants the Tribunal to direct the Bank to confirm him from the 2nd September 1949.

Shri Somesh Chandra on behalf of the Bank stated that the applicant has since been confirmed from 2nd November 1950 and has been receiving his regular increments. Under these circumstances the case does not call for any interference and is filed.

(27) *Jagdish Prasad Sharma*.—The case for the applicant as stated through the Union is that he was an active member of the Union and was transferred in order to remove him from his place of Union activities. It was also alleged that there were other spare hands but he was picked up on account of his Trade Union activities. The relief sought for was for re-transfer and payment of compensation for the period that he suffered on account of illegal transfer.

The Bank representative in reply averred that transfer was made owing to the exigencies of the administration in normal course and not on account of Trade Union activities of the applicant. It was further argued that the transfer was made within U.P. State from Bareilly to Kanpur as he had become spare at Bareilly, and that the management was not aware of his Trade Union activities and even if he had any he could have continued at Kanpur.

The transfer admittedly took place within the State and was permissible even under B. B. Singh's award which applies in the case of U.P. Banks. The one plea that the transfer was made vindictively is not substantiated by any evidence and appears to be the usual plea and if allowed would not only make transfer a

matter of choice, but would render normal working of Banks administration almost impossible. The claim is dismissed accordingly.

(28) *Ved Prakash Kapoor*.—His case is that he was serving at Ferrukhabad as Godown-keeper and also used to perform clerical duties. He was, however transferred as the Manager was keen to bring one of his own men at Ferrukhabad branch. It was alleged that by his transfer, which was made unjustifiably he suffered lot. The relief sought was for re-transfer to Ferrukhabad office. It was also alleged that his annual increment was withheld arbitrarily and it was prayed that the same should be released.

Shri Somesh Chandra on behalf of the Bank in reply raised a preliminary objection that the transfer was not mentioned as one of the items in the terms of Reference and thus the matter is beyond the scope of this Reference. On merits it was submitted that so far his demand goes he was appointed as a clerk and he was working as a clerk. His duty as godown-keeper to supervise the stock was an extra work for which he was being paid Rs. 10 at Ferrukhabad. Subsequently, a wholetime godown-keeper was appointed who deposited Rs. 1,000 as security and Shri Kapoor was relieved of the extra work. Regarding transfer it was contended that the same was made owing to administrative exigencies and was not due to any ulterior motive. It was further stated that his father was also a businessman and there were some complaints of constituents of Bank regarding the conduct of this employee and his stay at Ferrukhabad was not considered desirable. The transfer was moreover within the same province and his emoluments were in no way reduced, excepting the amount Rs. 10 which he was getting for the extra work as godown-keeper. In regard to the graded promotion the Bank representative stated that the same has already been given to him.

The only question now is regarding the transfer because the graded promotion has already been granted. In this connection the same reasoning and arguments apply which have been advanced in the case of Shri Jagdish Prasad Sharma (No. 26) in this award. The transfer was made in the same State and one of the reasons which prevailed with the management was that the applicant's father Shri Ram Lobaya, who is not actually a licensee, was working as partner with Shyam Lal Krishna Kumar Hayati Ram at Ferrukhabad where the applicant was working. It was found that this partnership firm was availing the services of the applicant in order to facilitate their business. The Bank in their written statement also charged the applicant that certain accusations in this connection but without going into the matter I am satisfied that the transfer was not actuated by any ulterior motive and the same was made owing to the exigencies of the administration. In the result the claim fails and is dismissed.

(29) *Working hours for the menial staff of Kanpur Branch*.—The complaint lodged by the U.P. Bank Employees Union, Kanpur, in this application is with regard to the increase in working hours of the entire menial staff of the local branches. The main allegation is that the working hours have been raised from 8 to 9 hours daily and it was prayed that the Bank be directed to maintain the *status quo* from 13th June 1949.

Shri Somesh Chandra on behalf of the Bank contended that the Bank was getting work from the menial staff within the dictates of the U.P. Conciliation Board award as well as within the ambit of the provisions of U.P. Shops and Commercial Establishment Act. It was argued that under B. B. Singh award the duration of work fixed was 8 hours. According to the Conciliation Board award in the case of menials, it was held that the provisions of U.P. Shop and Commercial Establishment Act would prevail and the same are being observed. It was also urged that in the case of menials the attendance half an hour earlier as well as off duty half an hour later is always necessary for the working of the administration.

Now this question has already been fully dealt with in a previous case in this award and held that Shri B. B. Singh in Issue No. 11 of his award, which was reviewed by the Conciliation Board award in Issue No. 80 under the heading 'overtime' (*however to Chowkidars*, said now) that the Chowkidars and the menial staff are entitled to overtime allowance only if they work for more than 8 hours a day in accordance with the second proviso to Section 8 of U.P. Shop and Establishments which reads as follows.

'No employer shall allow or require any employee to work for more than eight hours in any day, exclusive of intervals allowed for rest or for meals'.

An explanation has also been added to this wherein it is stated that "for the purpose of calculating the normal hourly wage the day shall be reckoned as consisting of eight working hours".

The above provisions clearly indicate that the menial staff has to put work for 8 working hours excluding the interval allowed for rest and for meals. What happened in this case was that the Bank in the first instance reduced the working hours to 8 including rest hour along with the clerks, who in the terms of B. B. Singh award had to work for 8 hours inclusive of the rest period. subsequently the Bank authorities in terms of Conciliation Board award made an increase in the working hours so far the menial staff was concerned. The U. P. Bank Employees Union felt aggrieved and filed this application for the reduction of working hours; and reliance was placed on Rule 10 (Page 5) of the Conciliation Board award wherein it is laid down that existing better terms shall not be prejudiced by any award. It was sought to be argued on the basis of this rule that once the privilege was given to the menial staff the same could not be taken off to their prejudice. But it is conveniently forgotten that the interpretation put initially was found faulty and what was subsequently modified was in consonance with the terms of the Conciliation Board award as explained in Issue No. 81. The fallacy of the demand lies in not taking into consideration the rest period, the benefit of which has been given to the clerks but not to the menials in terms of the Conciliation Board award. Under these circumstances I do not think that any interference is called for and the application is rejected.

(30) *Chandra Pal*.—The facts as disclosed from the application are these: He was appointed as a Chowkidar in February 1948; but was not confirmed after the expiry of six months as contemplated by B. B. Singh Award. He was subsequently transferred as a permanent godown chowkidar in place of Shri P. Singh. His grievance is that he should have been confirmed in October 1948 and would have enjoyed the benefits of Provident Fund, Bonus, etc.

Shri Somesh Chandra on behalf of the Bank submitted that he has been made permanent and allowed the benefit of Provident Fund etc. but the relief sought to give effect retrospectively is untenable. It was further explained that the delay in his confirmation was due to the fact that he was a temporary Chowkidar and according to Conciliation Board award he should have worked atleast 2 years and not 6 months before he could have been confirmed. Reliance was placed on an application dated 25th February 1950 of the subject (Ex. 1) in this connection.

The applicant has since been confirmed and the only other plea which was urged by him in his application viz. that he should have been confirmed with retrospective effect does not appear to me a sound one because he was admittedly a temporary hand and no confirmation was to be made automatically so long the management had not given due consideration and was satisfied. According to the Conciliation Board award also he should have worked for atleast 2 years and not six months before he could have been confirmed and in these circumstances it appears that his grievance was rather imaginary to have claimed confirmation after 6 months automatically. No interference accordingly is called for and the application stands dismissed.

(31) *Joginder Paul Kohli*.—His grievance as disclosed from his application is that he was working as a Senior grade clerk at Nayaganj Branch (Kanpur) and was getting his annual increments alright but in the year 1949 he was given annual increment of Rs. 4 instead of Rs. 5 to which he was entitled in terms of the U. P. Conciliation Board award. His claim was for the grant of graded increment from 1st December 1949 @ Rs. 5 per month as well as for the payment of the difference of bonus and the adjustment of Provident Fund contribution from that date.

The Bank in written statement admitted that the graded increment fell due on 1st December 1949 but by that Shri Kohli had been transferred to U. P. and he was entitled to the graded increment of Rs. 4 only in terms of the U. P. award. It was contended by Shri Somesh Chandra on behalf of the Bank that the transfer was effected on his own seeking as evidenced from his letter dated 29th March 1949 (Ex. 1) and consequently he became amenable to all the terms under the U. P. award.

The grievance regarding lesser increment is to be pivoted on Ex. 1 an application sent by Shri Kohli to the District Manager, dated 29th March 1949, wherein in the last paragraph he has stated as under:

Ex. 1 "I request your honour to transfer me to Kanpur, for I have to perform the marriage ceremonies of my two sisters and start my

family life from a scratch leaving aside the losses suffered by me and my parents in Pakistan. In the end I again beseech the favour of your very kindly transferring me to Kanpur, I will pray for you and yours."

In the light of this request he was transferred to Kanpur and became amenable to the rules and regulations prevailing there. The result was that the increment of Rs. 5 which fell due to him by the time that he joined Kanpur was not granted and instead he was granted Rs. 4 increment. The reduction of Re. 1 and other consequent advantages as well as disadvantages were brought about on his own motion and as such the grievance is not well founded. In the result the application fails and is dismissed.

(32) *Ram Shankar Seth*.—He was working in the Punjab National Bank as officiating Supervisor in a permanent vacancy; but he was not confirmed on due date despite his repeated request. He was, however, ultimately confirmed on the 1st April 1950. His grievance is that he should have been confirmed earlier without in terms of the award and that the delay had affected all his emoluments viz. increments, payment of bonus, dearness allowance, etc. Relief sought is for payment of arrears of pay, bonus, etc. retrospectively.

The Bank representative in opposing this application contended that his work was not found satisfactory and the confirmation was accordingly delayed.

His case is almost identical with that of Shri Paul Kolhi (serial No. 31) discussed above. The same reasoning prevails with the result that the claim fails and is disallowed.

(33) Application filed by the U. P. Bank Employees Union, Kanpur, regarding the non-payment of arrears of Bonus and contribution towards Provident Fund on the following:

- (1) Harish Chandra Bajpal
- (2) Shadi Lal Kapoor
- (3) Ganga Saran Kapoor
- (4) Nagina Singh
- (5) Bir Sen Dhir
- (6) Kedar Nath Mishra
- (7) B. K. Srivastava
- (8) Chandra Pal
- (9) Shyam Lal Bhatia
- (10) Jagdish Ch. Varma

An application on behalf of the above-mentioned employees was preferred by the U. P. Bank Employees Union to the effect that the arrears of their bonus and contribution towards Provident Fund due to the non-payment of their increments on due dates were not paid to them although they were entitled to those arrears. It was alleged *inter alia* in that application that the delay in sanctioning the graded increment affected their Provident Fund deduction also. The prayer sought for was to direct the Bank to make adjustments accordingly. In the case of Shri Harish Chandra Bajpal and Shri Shadi Lal Kapoor separate claims were also filed and the same have already been heard and disposed of in this award. In the case of the remaining 6 employees no particulars regarding each individual were brought on the record and their case was generally represented by one application. The main point urged in the application is in regard to the non-payment of arrears of their bonus and contribution towards Provident Fund as said above on account of back dated confirmation. It was alleged that the practice previously was that the graded increment was not sanctioned in the same month when it fell due and sanctioned was accorded in the next month and as such the delay in sanctioning the graded increment affected their confirmation also.

Shri Somesh Chandra on behalf of the Bank in reply raised a preliminary objection that Bonus and Provident Fund are not covered by the terms of the Reference. On merits it was argued that the applicants had already been confirmed from the dates in which they were entitled under the terms of the award and the bonus is always determined from the revenue of the year and allocated amongst those who are eligible for that year. In case any retrospective effect was to be given it would not be practicable to give effect to it because the bonus

had already been disbursed. In regard to the confirmation of Bank representative averred that the same had already been made and the question of back dated confirmation was neither warranted on merits nor in law.

Now this point has already been considered in more than one cases and without incurring the risk or repetition it may be observed that the question of confirmation revolves on the principle as to whether it should follow automatically on the expiry of a certain period of service or it was open to the employer to apply their mind on the merits of each case of confirmation. While dealing with some other cases in this very award it has been noticed that the work of each employee whose case for confirmation comes up before the management is necessarily to be considered in the light of the reports received from the Inspectors and Managers in regard to their work, and it must take some time to come to the final conclusion and that the delay accordingly cannot always be taken to have occasioned *mala fide* and some allowance shall have to be given to the employer for dealing with cases in due course, of time. The other question of course for consideration is as to whether the employee becomes entitled on putting a certain amount of service say for 6 months to confirmation automatically and why should not the management look into his case sometime earlier and come to the conclusion at the proper time when confirmation falls due. In the U. P. State the period in terms of the Conciliation Board award in the first instance is 2 years and secondly as held by me in Delhi and Punjab Bank disputes award, the probationary period is not a period of service as a matter of right and forms the basis of a certain opinion in regard to the employee for the purpose of taking him in the permanent cadre. I have once again given my careful consideration to the question and I still adhere to the same view that confirmation cannot be claimed as a matter of right to take effect automatically on the expiry of a certain period and each was to be adjudged on its own merit at the time of confirmation. Judged from this view I do not find any substance in the application and the same is disallowed.

(34) *Ram Vilas Misra*.—He joined the Bank's service as a Peon on the 23rd August 1946. He was, however, transferred to Sitapur in 1948 where according to his allegation he was detained by the Officer-in-charge without any written order. The matter was referred to the Labour Commissioner but to no avail and the local Manager became inimical towards him and levelled several charges on minor grounds. It was further alleged *inter alia* that on the basis of the Medical Certificate he applied for leave but the same was not granted and the Medical Certificate was returned to him. It was prayed that all charges levelled against him should be declared null and void and he should be compensated for not having granted leave due to him and furthermore, he should be retransferred to Lakhimpur.

Shri Somesh Chandra, Bank representative, raised the preliminary objection that all the reliefs sought by the applicant are not covered by the Reference and as such are not triable by this Tribunal. On merits it was explained that the Bank was within its rights to transfer the employee owing to the exigencies of service and the applicant moreover was transferred within the same area at a distance of about 30 to 40 miles. Coming to the second relief for the annulment of the charges, Shri Somesh Chandra contended that those charges relate to the general conduct and behaviour. He was duly charge-sheeted and called upon to file his explanation. His explanations, however, were not found satisfactory and he was rather found defiant which amounted to another item of misconduct.

On the appreciation of the facts as disclosed by both sides it appears to me that the trouble arose when this Peon was transferred from Lakhimpur his home place to Sitapur. He joined the duty there but he was all the time aspiring to go back. The reason assigned for the transfer by the Bank authority in their written statement was that his relation with the Accountant incharge of Lakhimpur had become strained and he was engineering disaffection amongst the menial staff and it was not possible for the Manager to agree to the request of Shri Ram Vilas Misra to send him back to Lakhimpur. On his persistent request for re-transfer to Lakhimpur he was charge-sheeted for certain shortcomings and his explanation dated 31st December 1948 showed that he was considered unmannerly and unruly in his behaviour. The Bank authority naturally in the interest of discipline wanted him to behave better and the Peon appears to be very keen in going back to his home place and re-transfer was not considered despite his repeated request. The impression left on my mind after going through all the records is that the management on the basis of certain allegations against him which have not resulted in the termination of his services is not prepared to accede to his request of re-transfer to Lakhimpur and the Peon also feels very much aggrieved on his

prolonged stay at Sitapur I think it is a fit case in which the Bank should reconsider for his re-transfer. Shri Somesh Chandra of course raised a legal objection that the transfer does not fall within the items specified in the Schedule of the Reference and as such the point was beyond the jurisdiction of the Tribunal. The objection appears not to be without force but as the question of transfer is connected with other matters which are pending viz, certain charges, I would leave the matter to the good sense of the management to come to the definite conclusion in case the charges were really serious to seek the permission of the Tribunal for his dismissal if so desired or reconsider the question of his re-transfer because in the case of menial staff transfer to outside station for a long period and to deprive him from his stay nearer to his village is unjustifiable. Even if the man had become undesirable when he was sent to Sitapur, his transfer to another station would be sufficient punishment to him by this time and the case definitely calls for further consideration Awarded accordingly

(32) *Shri Lal Kathuria*—the applicant made his appearance in person and as stated by him his case put briefly is that in the course of his work as Accountant in the year 1949 he put in some overtime work at Kasganj but he was paid on the basic salary only and not on the dearness allowance etc. His one grievance is that he should be paid overtime on the basic salary as well as dearness allowance. It was further alleged that he had worked at Merton Road Branch, Kanpur for sometime but he was not paid for the overtime. The third demand is that he was not paid overtime for 1st July 1950 when that day was declared as a holiday. The next demand was that some overtime was paid to him in August but he was made to refund the same in October on the plea that he was not entitled to that under the award. The applicant asked for the restoration of Rs 6 in that account. There was yet another demand viz that he was working on relieving duty for the last one year or so but no relieving allowance was given to him by the Bank. The last grievance relates to his frequent transfer from one place to other which amounts to harassment and that the Bank be directed not to harass him by frequent transfer.

Shri Somesh Chandra on behalf of the Bank raised a preliminary objection that all these demands viz payment for overtime work, allowance for relieving duty and harassment by way of transfer etc do not fall within the ambit of the Reference as borne out by the Schedule attached with the Reference and as such the Tribunal is not competent to take cognizance of this. The other contention raised by the Bank was that the applicant was an officer and does not satisfy the definition of workman. On merits it was submitted that whatever overtime allowance was due to him the same was paid on the foot of basic salary and that he was not entitled to any overtime allowance on the basis of dearness allowance because it has not been so determined by B B Singh award. Regarding the demand for relieving allowance, it was stated that the applicant worked for one month from 18th July 1949 to 17th August 1949 for which he was paid and henceforward he was permanently posted at Kanpur and the question of relieving allowance does not arise. It was maintained that his work is now of a permanent nature at Kanpur and this fact has been admitted by him in paragraph 5 of his claim. Regarding his allowance for one day viz 1st July 1950, it was contended that this day was declared as public holiday and the employees are not entitled to any overtime because the same is given for the closing of half-yearly accounts. The Bank representative argued that this principle had already been laid down by the All India Industrial Tribunal (Bank Disputes). Regarding the last grievance of frequent transfer it was argued that since participation the applicant has been transferred twice only and in one case when he was transferred to Gorakhpur in 1950 it was cancelled as it did not suit him. Finally it was urged that the nature of the demands warrant that if the case fails the Bank should be awarded costs against the applicant.

The parties have put their case in all its details and little remains for me to add so far the elucidation of the facts is concerned. The one legal aspect to be considered is in regard to the first demand viz that the overtime allowance should have been given on the basis of basic salary plus dearness allowance. In this connection reference was made to Issue No 44 of B B Singh award by the applicant while on the other hand it was contended by the Bank that no such provision was made in B B Singh award. Issue No 44 of B B Singh award deals with Hill allowance. The question of payment of overtime allowance however has been discussed in Issue No 80 of the Conciliation Board award and proviso second reads as follows—

“Provided also that any person employed overtime shall be entitled to remuneration for such overtime work at twice the rate of his normal remuneration calculated by the hour”

The words 'normal remuneration' clearly gives the idea of basic salary. At page 3^t of the Conciliation Board award under Clause (d) some commentary has been made on this proviso but the same only deals with when overtime is to be allowed and this particular point as to whether normal remuneration means basic salary including dearness allowance or basic salary itself has not been touched. Consequently the Conciliation Board award which applies in U. P. is silent on the point and for the purpose of interpretation the words 'normal remuneration' shall have to be considered in the light of dictionary meaning. Dearness Allowance to my mind connotes some special allowance and not the normal remuneration which is subject to variation in different States and at different times according to the index of the living wages. Furthermore, dearness allowance is no a benefit which normally forms the structure of salary and as such while putting construction on the word 'normal remuneration' it would be doing violence to the rule of interpretation to include dearness allowance as claimed by the applicant. I am, therefore, of the opinion that the applicant cannot justifiably claim overtime on the basis of dearness allowance also. In view of the fact that allowances have already been paid to him the demands Nos. 1 2 and 3 are devoid of any substance. Regarding the relieving allowance it was not denied that the applicant was not working as a permanent hand at Kanpur and it appears that the statement made by the Bank representative was the correct exposition of the situation. That part of claim also fails. Regarding the alleged frequent transfer the statement made by Somesh Chandra has taken wind out of the sails of the applicant and his claim appears to me really frivolous. I have thought more than once to mulct the party when frivolous claim was made or claim was resisted unjustifiably to burden the parties with cost. But in the first instance the question of awarding costs was not pressed in very many cases by both sides and secondly in the adjudication of this Reference upto now the question of cost has not been seriously considered. I have, therefore, no mind to deal this case as a special pleading for cost and would content with the aforesaid observation that the claim appears to be frivolous. In the result the claim is dismissed.

(36) *Prithvi Raj Sethi*—The applicant by his letter dated 17th May 1950 has communicated to the Tribunal that he has withdrawn his complaint. The Bank representative also has stated that the matter needs no adjudication with the result that the claim shall be deemed to have been withdrawn.

(37) *M. R. Atri*.—This case is that he joined the Bank's service in 1947 as a clerk and was promoted as an Accountant and transferred to Bijnor branch as Accountant. In the course of his service he passed Bank's departmental examinations for clerks, supervisors and Accountants and worked as an Assistant Manager of Paltan Bazar Branch Dehra Dun, for some time. He was posted as Manager designate at Arat Bazar, Dehra Dun. He worked there till 21st August 1944, and was transferred to Mussoorie as Manager. Some other transfers also followed but ultimately at the time of partition in 1947 he was reverted to the post of an Assistant and was again posted to Paltan Bazar branch in order to make room for a gentleman who was relation to one of the Bank's Directors. He was again transferred from Paltan Bazar branch (Dehra Dun) to Dhampur which was actually opened by him on the 3rd July 1948. With all his efforts, however, the work did not prosper there and ultimately the Bank authorities converted the sub-office Dhampur to Pay Office. On the conversion of Dhampur Sub Office as Pay Office, normally his services should have been utilised somewhere else and a junior man should have been sent there. But the Bank did not see 'o' that and he continued working as an Accountant which was a kind of demotion for him. Ultimately, it was on 4th July 1950, that he received orders to the effect that his services were terminated *vide office letter dated 4th January 1950* (Ex. A). It was contended that no reason was assigned as evidenced from Ex. A and only a cheque for Rs 270 being the salary for the unexpired period of his covenant was sent to him. Shri Atri stated that he received the Provident Fund contribution and not security deposit balance.

Shri Somesh Chandra, Bank representative, raised a preliminary objection that Shri Atri was an officer as Sub Manager and does not satisfy the definition of workman as defined under Section 2(s) and his case is not triable. In this connection reference was made to the nature of his duties specified in the Power of Attorney; reference was made to that and duty sheet and schedule of specific powers vested in Assistant Managers etc. copies of which were produced (Exs. 1 and 2). On merits Shri Somesh Chandra contended that it was not a fact that he was demoted to Assistant Manager or was working as Accountant-in-charge at the time of the termination of his services. This was however correct that sub office Dhampur was converted into Pay Office but Shri Atri was directed

to continue temporarily until his new incumbent took over the charge as evidenced from the letter of 19th September 1949 (Ex. 3) wherein he has designated himself as Manager. On the strength of this document it was maintained that it was wrong to say that he was working as Accountant at the time of the termination of his services.

In respect of the legal objection raised by the Bank the point for determination is as to whether the applicant's designation was Manager at the time of the termination of his services or he was made an Accountant by that time. In this connection reliance was placed on the letter dated 19th September 1949 (Ex. 3) sent by Shri Atri to the Manager, Moradabad. In this letter he himself has stated himself as Manager and by his own admission he was an officer. In the light of the finding given in the Delhi Bank disputes award, a Manager cannot be treated as a 'workman' under the Industrial Disputes Act and his claim fails on this legal objection. On merits Shri Somesh Chandra also explained the whole position and argued that the work of this applicant was not found satisfactory and he was given warning sometime on several occasions to improve his work but as in terms of the covenant his services remained continue.

In view of the finding given on the legal aspect of the question I do not feel called upon to take up the case on merits more especially when he was not duly charge-sheeted or any enquiry committee was set up to investigate the alleged accusations brought against him. The applicant had also claimed relief regarding dearness allowance and non-implementation of certain arrears, but I am afraid those matters cannot be gone into in the light of the finding that the Tribunal had no jurisdiction over his case. These also fail for want of jurisdiction.

(38) *Chhotey Lal Agrawal*.—The claim made by the applicant was for the payment of arrears in terms of the award whereof increment was due to him. The Bank in their written statement has stated that the claim of Shri Agrawal has since been settled and needs no objection. Shri Somesh Chandra has endorsed this fact with the result that the claim is filed.

(39) *Nannumal Gupta*.—This claim relates to the grant of increment in terms of B B Singh award. The Bank did not dispute the claim in the written statement and has stated that the claim has since been settled and the increment has been released. Shri Somesh Chandra endorses this fact and as such it requires no adjudication.

(40) *Kartar Chand Pawa*.—This claim was not pressed by the Union representative and the same is filed having been withdrawn.

(41) *Khairati Lal Manga*.—The case of the applicant is that he joined the Bank's service in 1944 as Junior Grade clerk and was subsequently confirmed in the year 1945. He, however, was transferred to Trivandrum branch in 1945 on promotion to work as an officiating Accountant in reward of his diligent and honest work. He worked for sometime there and then went on leave. During his leave period some accusations were levelled against him in regard to a cheque for Rs 600 which was kept as a part of the cash in the chest. The irregularity was pointed out by him to the Manager regarding this cheque on joining the duty after the expiry of the leave but no action was taken at that time and it so happened that he again proceeded on leave for his marriage on 13th January 1948. He however, fell ill and applied for the extension of leave on the expiry of which he joined his post after a couple of months on 21st April 1948. In his absence some other charges were levelled against him and he was charge-sheeted on return from leave and was called upon to submit his explanation. No regular enquiry however was made and he was suspended from service by a letter dated 14th April 1948. Subsequently another charge sheet dated 21st February 1948 was served upon him and he was asked to resign. Reliance was placed on a copy of the written statement filed on behalf of the Bank through their counsel before the All India Industrial Tribunal (Bank Disputes) Bombay (Ex. A). On the strength of this document it was contended that the resignation tendered by the applicant was not made of his free will but it was on the asking of the Bank authority that he submitted his resignation on 31st July 1948 and his services came to close.

Shri Somesh Chandra on behalf of the Bank raised a preliminary objection viz. (1) that the cause of action arose in 1943 much earlier than 13th June 1949 and the claim is not triable by this Tribunal. (2) that the cause of action arose in Trivandrum which lies in Part B State and as such is not triable by this Tribunal. (3) that the case had already been adjudicated upon by the All India Industrial Tribunal (Bank Disputes). Arguing on the first objection, Shri

Somesh Chandra submitted that it was not a continuing cause of action inasmuch as it related to the payment of dues and not to any representation as evidenced from Exhibits D and E read along with Exs. 1 and 2 in this connection. It was further argued that in these letters he sought for the settlement of his dues which were subsequently paid to him as borne out by copy of the receipt dated 8th October 1949 attached with the written statement (Ex. 3). Alluding to the other representation made to the General Manager on the alleged ground of protest and for reinstatement, it was submitted that the representation was for re-employment and not for the withdrawal of resignation and reinstatement but for re-employment as evidenced from the copy of the original representation dated 18th October 1949 (Ex. 4). It was further emphasised that even if the interpretation be construed as one for reinstatement it does not extend the time for a cause of action in the eye of law which occurred more than a year back. Dilating upon the second legal objection Shri Somesh Chandra contended that the cause of action arose in Part B State over which under the old Act the Tribunal had no jurisdiction and the same finding has already been given in the Delhi Bank disputes award.

The claim obviously suffers from more than one malady. The cause of action arose admittedly earlier than 13th June 1949 and the plea of continuing cause of action is devoid of merit. Furthermore the case emanates from Part B State and as held already in previous awards is not triable for want of jurisdiction. The Union representative insisted on making arguments and was heard at length to no avail. The claim fails and is dismissed.

(42) *Shiv Lal Sharma*.—His case is that he was sent by the District Manager, Eastern Circle, Delhi, to Lahore for salvage work of Bank godown at Kamoke (Pakistan). It took him one and a half month to do the work at good deal of personal risk and life in Pakistan. The co-operation and assistance of Pakistan authorities was not forthcoming and as such he had to stay much longer. On his return he submitted a travelling allowance bill to the tune of Rs. 1,005/2/- He, however, admitted that he was paid Rs. 210 in advance when he left for Lahore which amount could be adjusted from the total payment of Rs. 1,005/2/-.

Shri Om Prakash Gupta on behalf of the Bank raised a preliminary objection that the claim does not fall within the ambit of the Reference which is to deal with specific items mentioned in Schedule attached with the written statement. Yet another objection was raised that the cause of action arose earlier than 13th June 1949 and was not triable by this Tribunal under the Reference. On merits it was stated that Shri Sharma stayed much longer unnecessarily. It was also denied that he had actually salvaged the property of the Bank as alleged by him as the brass was salvaged by the custodian's nominee viz. Mr. Mohsin Ata and the Bank has justifiably refused to pay the travelling allowance. Shri Gupta relied on the report of the Pakistan Manager (Ex. 1) and maintained that the employee did not do anything there and as a special case he was allowed to retain the amount given to him in advance.

Now on merits, on the appraisement of the facts and circumstances I do not see eye to eye with the Bank authorities in their plea that as the employee did not do anything at Lahore in Pakistan he was not entitled to get his travelling allowance. The expenditure was incurred for going and coming back and he undoubtedly went there at some risk and in case he had neglected his duty there he could have been hauled up for misconduct or neglect of duty but the expenses incurred by him as travelling expenses stand quite on a different footing. I am therefore of the considered opinion that the Bank was not justified in withholding his travelling allowance bill. Of course if he had stayed unnecessarily for some time more which is borne out by a note on the travelling allowance bill dated 20th March 1948, some amount from his halting allowance should have been deducted. The case of Shri Sharma, however, suffers from legal objection viz that the cause of action arose decidedly in 1948 and this reference deals with cases which arose after 13th June 1949. I have therefore no jurisdiction over the matter and the claim must fail. The same is disallowed for want of jurisdiction.

(43) *Khem Singh*.—This case relates to the stoppage of increment which fell in the year 1948. It was alleged that the matter was forwarded to the U. P. Labour Commissioner in July 1948 whereby the Labour Commissioner by his letter dated, 19th November 1949 (Ex. A) informed the applicant that the graded increment had since been granted. It was argued that in fact the increment was not granted. The Bank representative raised the preliminary objection that the cause of action arose before 13th June 1949 and the matter therefore is beyond the jurisdiction of the Tribunal. On merits it was stated that the increment

was granted from 1st July 1948 and the one in question *viz.* from January 1948 to June 1948 was withheld as punishment on account of unsatisfactory work and general conduct.

The prayer is for the grant of the increment withheld and the same admittedly relates to the period earlier than 13th June 1949. The claim fails for want of jurisdiction and is disallowed.

(44) *Narendra Kumar Porov*.—The applicant was not present and the case was heard in absentia under the provisions of Rule 19. His case as disclosed from his application is that he was to be confirmed from 8th August 1947 but the confirmation was withheld. It was prayed that effect should be given to confirmation retrospectively *i.e.* from 8th August 1947 as well as for payment of all arrears of increments, bonus, etc.

The Bank reply was that he joined the Bank's service in 1947 on Rs. 60 as a Junior Grade clerk but his work was found unsatisfactory and inspite of warning he made no improvement. In April 1948 he was reported against by the Branch Manager and he was regularly charge-sheeted. The explanation submitted by him was not found satisfactory and he was dismissed; but subsequently on the intervention of Labour Inspector he was reinstated from the date he was allowed to join the Bank. Shri Gupta further argued that his case also came up before the All-India Industrial Tribunal (Bank Disputes), Bombay and was decided by their lordships and the matter cannot be re-agitated once again. The award in question was published in the *Gazette of India* dated 26th August 1950.

The claim is a misconceived one and has no legs to stand. In the first place the case was decided earlier by their lordships of the All-India Industrial Tribunal (Bank Disputes), Bombay, and secondly it relates to the years 1947 and 1948 and does not fall within the scope of the Reference. The same is dismissed.

(45) *A. H. Misra*.—The applicant was not present. The Bank representative, however, stated that Shri Misra has withdrawn his claim regarding the increment. The case shall be deemed to have been withdrawn and is filed.

(46) *Tirath Ram Sahel*.—He was an old employee and got his increment of Rs. 5 on 1st December 1946 at Lahore City as this was the usual increment. He was transferred to Mathura in 1947 and this time he was sanctioned only Rs. 4 on 1st December 1947. It was alleged that the Bank contravened the provisions of Section 10 of the Conciliation Board award in decreasing the graded increment from Rs. 5 to Rs. 4. Reference was made to Issue 14 of Conciliation Board award at page 30. It was prayed that his increment at the rate of Rs. 5 be restored from the date he joined at Mathura. Shri Sharma arguing on the point of jurisdiction stated that if the increment which fell due in 1947 and 1948 do not fall within the ambit of the Reference the increment which fell after 13th June 1949 be allowed.

The Bank representative in reply submitted that the cause of action arose earlier than 13th June 1949 and as such was beyond the jurisdiction of the Tribunal.

The objection of the Bank prevails and the claim which cannot be separated stands dismissed for want of jurisdiction.

(47) *Om Parkash Kapur*.—The point involved is that prior to his transfer to U.P. the applicant was drawing Dearness Allowance at the rate of Rs. 35 but the same was reduced to Rs. 25 when he was transferred to Mathura Branch. It was contended that this change contravened the terms of Item 16—Issue 14—discussed at page 13 of the Conciliation Board award (U.P.). The transfer was made in September 1949 and the relief sought was for the payment of Dearness Allowance at the rate of Rs. 35 with effect from the date when he joined duty.

Shri Gupta raised the preliminary objection that the item of reduction in Dearness Allowance does not fall within the ambit of the item specified in the Schedule attached with the Reference and as such the matter is not triable by this Tribunal. On merits it was submitted that the transfer was made on his own request and he was informed with regard to the terms and conditions of service in U.P. as evidenced from Memo. dated 3rd September 1949 (Ex. 1), a copy of which was given to Shri Om Parkash and it was open to him to take any objection over the transfer. It was also stressed that his salary was raised from Rs. 50 to Rs. 60 as he was loser by the reduction caused in his Dearness Allowance.

Replying to the reference Issue No. 14—page 13 of the Conciliation Board award Shri Gupta controverted the argument by referring to Government order dated 15th March 1947 published at page 13 as well as page 5.

As Exhibit 1 explains the position both ways and would clinch the matter. the same is reproduced as below:

Ex. 1

No. DM/E 26880

Dated the 3rd September 1949.

MEMORANDUM

With reference to his representation dated 20th August 1949 Mr. Kapur is hereby informed that he had been transferred to Branch Office, Mathura. He should proceed immediately and report for duty to the Manager there. At Mathura, he will draw the following emoluments:

Salary Rs. 60.

Dearness Allowance Rs. 25.

As the transfer is being effected at his own request, he is not entitled to any T.A.

(Sd).

District Manager, Eastern Circle.

In the light of this reliable documentary evidence the claim must fail because the applicant was transferred to Mathura on his own request and the emoluments which he would get there were made known to him. The claim is accordingly misconceived and the same is disallowed.

(48) *Leave Rules of Chowkidars and Peons of Mathura.*

(49) *Continuation of U.P. Allowance to the Punjabi Staff.*

(50) *Privilege leave to the Employees of Mathura Branch.—*

These claims were not pressed by Shri Kakkar, U.P. Bank Employees Union representative, and the same are filed.

(51) *Shiv Dayal (Peon).*—He joined the Bank's service in 1948 as a Peon and was confirmed in February 1949. His services, however, were terminated without assigning any reason by the Manager on 14th July 1949. He was neither charge-sheeted nor was given any opportunity to submit his explanation. He approached the Manager and requested him to reinstate but no reply was forthcoming. It was contended on his behalf that the Peon used to work in the house of the Manager also but when he refused to work the Manager was annoyed and discharged him from service and as such the discharge order was unjustifiable and be set aside.

Shri Gupta on behalf of the Bank submitted that this employee was found to have been indulging in gambling and various reports were received against him relating to his misbehaviour and insubordination to the officers. On one occasion he was fined by the management but still he did not improve. The Bank authority ultimately approached the Deputy Labour Commissioner for permission to dismiss him and the requisite permission was accorded by his letter No. 4896, dated 21st February 1949 (Ex. 1). This permission, however, was not given effect to as the employee became repentant and was accordingly given another opportunity to improve his conduct. Soon after he again repeated his conduct in the same manner and despite warning did not show any sign of improvement and the Bank was constrained to terminate his service by order dated 21st July 1949 (Ex. 2). The allegation of the other side that the Manager was taking household work from him was categorically denied and it was stated that no such complaint was made by the applicant and it appears to be an after-thought.

Shri Shiv Dayal was present in Court but did not come into the witness box in the first instance. He, however, was allowed to be examined as his own witness at the stage of reply. In that statement he has stated on oath that Kochhar, the then Manager, used to take household work from him after office hours and on his refusal he was annoyed. In cross-examination he admitted that he was fined Re. 1 in January 1949 on having defied the Treasurer during office hours. He furthermore stated that he had never made any complaint in writing to the Head Office or to any other officer in regard to the extra household work which was being taken from him. Now, on the one hand the employee has by his sworn testimony given out certain facts which made him to defy the officers and on the other hand permission for his dismissal was once secured from the Labour

Commissioner. On the examination of the evidence and the appraisement of all the facts and circumstances I feel inclined to think that it was not far wrong on his part to say that some household work was being taken from him. But this one thing does not resolve the matter. The question for determination is as to whether his dismissal was occasioned sheer on account of Shri Kochar. The order of dismissal (Ex. 2) states that he was discharged on account of gross misbehaviour with the entire staff and negligence of duty. On the top of it permission was once secured for his dismissal as evidenced from Labour Commissioner's order and in case the management wanted to get rid of him they could give effect to that and Shri Kochar who is stated to be the cause would have stood in the way of his continuing. But what actually happened as stated above is that he was allowed to continue despite the permission and ultimately after several months his services came to an end on the score of misconduct. This is correct that this time fresh permission was not asked for. The case is to be governed under the provisions of old Act and as such this permission was even necessary. For all these reasons, there is no substance in the claim and the same is dismissed.

VI. Reference No. 21 of 1950

UNITED COMMERCIAL BANK LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal etc., for U. P. Bank Employees Union, Kanpur (appeared at Dehra Dun and Naini Tal).

Shri Gouri Shankar Seth assisted by Shri M. Krishnan, for the Bank (appeared at Kanpur and Naini Tal).

(1) *Neki Ram*.—This claim was withdrawn by a communication dated 13th April 1951 (Ex. A) and needs no adjudication and the same shall be deemed to have been withdrawn.

(2) *Shri Ram Shukla*.—His case is that he was entitled to an increment of Rs. 10 which fell due in 1950 but he was given an increment of Rs. 4 only on the plea that he was already receiving Rs. 8 in excess according to the terms of the Conciliation Board award regarding minimum scale of pay prescribed for the employees of his status. The relief sought was to direct the Bank to pay the balance of Rs. 18 due to him and to fix his salary at Rs. 105 as his basic pay. In regard to the fixation of his salary viz. Rs. 105 per mensem reference was made to paragraph 16 (Issue No. 14) of the Conciliation Board award in support of the contention. Shri Gouri Shankar on behalf of the Bank stated that so far the fixation of pay and increment was concerned the same has already been made in terms of the U.P. Conciliation Board award referred to above with the result that the applicant is now drawing Rs. 105 as claimed by him. This finishes with the first part of the claim. In regard to the payment of difference of Rs. 18 claimed by the applicant, the Bank representative opposed the application and argued that the increase claimed in the Dearness Allowance was not based on B. B. Singh award and the claim was untenable. It was further argued that the increase in the Dearness Allowance was no doubt made in terms of the Interim award passed by their lordships of the All-India Industrial Tribunal (Bank Disputes) but that award has since been declared void by the Supreme Court and its implementation has not remained binding upon the Bank. It was further argued that even on calculations the difference at best comes to Re. 1 and not Rs. 18 claimed by the applicant as borne out by the chart (Ex. 1) filed in the course of arguments. The point involved has presented some difficulty because the applicant did not refer to his fact that the increase in the Dearness Allowance was made on the basis of Interim award of the All-India Industrial Tribunal (Bank Disputes). The question, however, was considered in the light of the notice issued from the Bank office in respect of the implementation of the Interim award and certain deductions claimed by the Bank on the plea that the employees had been the recipient of certain extra amount sometime earlier. A copy of this notice was brought on the record in another case which stands in the name of Shri Bhairon Prasad Seth whereby the Bank informed the Party concerned that the rate of Dearness Allowances awarded by B. B. Singh award was 30 per cent. of the salary with a minimum of Rs. 25 but in terms of the Interim award an increase has been made subject to certain deductions. It was furthermore stated that the extra benefits shall have to be deducted from the amount of interim increase and on these promises the employee was informed that henceforward he will be in receipt of emoluments according to the terms of B. B. Singh award and the subsequent award given in connection therewith and that he will not be governed by the Bank's general scales. Applying this principle laid down in this circular it appears that the Bank while implementing the increase in the Dearness Allowance in compliance with the interim award claimed certain deduction on the basis of extra benefit

already enjoyed by the employee and thereby calling off the benefit accrued to the employee by virtue of the interim award. The argument now advanced by Shri Gouri Shankar was that interim award has since been declared void and as such the implementation was unnecessary and the claim based on the calculations, any increase in Dearness Allowance was untenable. Judged from the legal aspect the argument prevails but at the same time the other question crops up as to whether the Bank was justified in claiming the deduction as claimed in the aforesaid circular at the time of the implementation of the interim relief award. But, there is no evidence on the record to show as to how the claim for Rs. 18 is sustainable and at the same time it is also not clear on the record as to how the Bank could claim deductions in the salary by calling upon the employee to refund the excess already enjoyed by the applicant. In these circumstances I find that the matter has not been fully thrashed out and there are certain snags which require clarification. As the main grievance regarding the fixation of pay has already been resolved, I am not prepared to allow the difference of Rs. 18 as claimed by the applicant in the absence of any clear cogent evidence on the record. The result is that the claim fails and is rejected.

(3) *Bhairon Prasad Seth*.—He was working in the Bank since the inception of the Branch in the year 1944. He was appointed on the basic salary of Rs. 70 plus Rs. 10 Dearness Allowance and was given an increment of Rs. 10 in the year 1945. No increment was made in his basic salary in the years 1946 and 1947. He, however, received an increment of Rs. 5 from January 1948. It was urged that according to the award, the Bank reduced the scale of pay from 65—5—85—10—125 and his pay was fixed to Rs. 85. He also received an increment according to the terms of the award of Rs. 10 for the year 1949; but in the year 1950 an increment of Rs. 4 only was given instead of Rs. 10 and he was served with a Memo. informing him that he was receiving Rs. 8 per mensem in excess of the award. The relief sought was that as the memo. was contrary to the award, he was entitled to receive Rs. 105 as basic salary plus Rs. 42 as Dearness Allowance—total Rs. 147; whereas he was only receiving Rs. 129 and thus he was entitled to receive the balance of Rs. 18. A chart showing the figures of the increment received and what was actually due was enclosed.

Shri Gouri Shankar on behalf of the Bank stated that his case was identical with that of Shri Shukla which has been discussed above. In this case it was also stated that the increment of Rs. 10 had already been released and in regard to the Dearness Allowance his claim was untenable because the Interim award on the basis of which this claim has been made is void. On merits, it was argued that calculations made by the applicant are misleading and the same have not been made in accordance with the direction given by their lordships in the Interim award of the All-India Industrial Tribunal (Bank Disputes), and consequently some deductions will have to be made, in order to adjust the basic salary or dearness allowance fixed by the Interim award which was already paid by the Bank.

The question involved has already been discussed in the case of Shri Ram Shukla in this award and the same arguments apply in this case also. The main claim viz. fixation of salary has already been resolved by fixing his salary at Rs 105 per mensem as claimed by him and the other part of the claim viz. payment of Rs. 18 as difference in the bank emoluments fails for want of any clear cogent evidence. Awarded accordingly.

(4) *Brij Lal Pandey*.—The applicant was working in the Bank as a clerk and was entrusted with a cycle for duty. His case as disclosed from the application put briefly is that on 14th March 1950 when he returned from first clearing he put the cycle at the down-stairs at the place where he used to keep it previously duly locked. He went upstairs to finish his work connected with the clearing and on coming back to the down-stairs for the purpose of second clearing he found that the cycle was missing. He immediately returned to the Manager, who along with the Accountant came down and made certain enquiries but subsequently began to abuse him in the presence of the customers and others. On his protest he was charge-sheeted and threatened to get his services terminated and was called upon to explain. It was alleged *inter alia* that he submitted the explanation and narrated the whole matter but still the Bank deducted book value of the cycle viz., Rs. 260-8 debiting the amount to his fixed deposit arbitrarily without his consent. The relief sought was for setting aside the order of deduction of that amount.

Shri Gouri Shankar on behalf of the Bank in reply raised a preliminary objection to the effect that (1) the incident took place on 14th March 1950 after the appointment of the Tribunal and hence the dispute was not cognizable by

this Tribunal; (2) the relief does not fall within the category of the items mentioned in Schedule II attached with the Reference and is thus not triable by the Tribunal. On merits it was submitted that the explanation given by the employee regarding the loss or the cycle was not found satisfactory and the cycle which was the property of the Bank, somehow was lost owing to the gross negligence of the employee hence the Bank was justified in recovering the cost from his security deposit. The allegations made by the employee were denied. Reliance was placed on document dated 8th December 1949 (Ex. 1), the statement of the Chowkidar to whom reference was made by the employee (Ex. 2) and letter dated 18th March 1950 in connection with the enquiry (Ex. 3).

This reference deals with specific items mentioned in Schedule II and this matter does not fall within the category of those items mentioned therein although the list is not intended to be exhaustive. At any rate the subject matter is not even remotely connected with the genus of the items specified and as such the claim fails on the ground that the matter does not fall within the ambit of the Reference and is thus not triable. On merits the case also hinges on the construction put on the undertaking given by the applicant on the 8th December 1949 (Ex. 1) wherein it was specifically mentioned that the applicant will be responsible for losses, tampering, substitution and replacement of all the accessories etc. The facts as stated by the applicant himself amply go to show that the loss was due to his negligence however slight it might have been and in terms of the contract he was responsible for the loss. In the result the claim fails and is disallowed.

(5) A. C. Kakkar.—This employee preferred more than one claims. One related to the implementation of the Interim Award of the All-India Industrial Tribunal (Bank Disputes) and in this connection an application was received on the 13th November 1950 from the Provincial Vice-President Shri K. C. Gupta that the case for the implementation of Interim award was filed through oversight and that the same may be taken to have been withdrawn. Reference was also made in this letter to the effect that the Employees Central Office will also communicate in this connection. Another letter dated 17th November 1950 purporting to have been signed under the signature of the General Secretary, U.P. Bank Employees Union, Kanpur Central Office was received to the effect that the relief for non-implementation of Interim award was to be withdrawn. The Bank management on receipt of these communications, however, took the stand that such withdrawals sometimes cause further litigation and are cropped up again and consequently it was better that the matter may well be decided upon. It was noted on their application that the matter will be considered at the time of hearing. Shri Gouri Shankar Seth urged that the Bank wanted to avoid multiplicity and was prepared to meet the claim if so required and in this connection referred to the arguments already made in the case of Shri Ram Shukla and others that Interim award having been declared void could not be given effect to. The Bank representative furthermore stated that in case the claim was treated to have been withdrawn he would claim costs because the Bank was unnecessarily put to contest initially.

The two other applications relate to the prescribed rigid banking hours and to the stoppage of due increment which was alleged to have fallen due on 1st January 1950. Both these applications were opposed by the Bank side. The claims were withdrawn by the General Secretary, U.P. Bank Employees Union, as evidenced from the Union's letter (printed on their office form) dated 17th December 1950 and this fact was furthermore endorsed by another letter sent under the signature of one Shri K. C. Gupta, Provincial Vice-President (received by the office on 13th November 1950). Under this circumstance the case shall be deemed to have been withdrawn and is closed.

(6) Nanaji Chowkidar.—His case put briefly is that he was an active member of the Agra Unit and his services were terminated without obtaining the requisite permission in the first instance in February 1949 in order to bar him from his Trade Union activities but he was reinstated on the intervention of the Labour Commissioner. The Bank however in a vindictive manner again sacked him on 30th July 1949 and thereby infringed the provisions of Section 33 of the Industrial Disputes Act. It was claimed on his behalf that his was a case of victimization.

The Bank representative in reply admitted the facts substantially but furthermore added that in the first instance his services were dispensed with on the review of the watch and ward department in February 1949 as some reduction became necessary in the strength of Chowkidars. The applicant being the junior-most was accordingly retrenched with the consent of the Labour Commissioner who was approached in this connection. He was, however, reinstated under the

instructions at the head office and another move was made to obtain the permission of the Labour Commissioner for the termination of the services of this employee. It was also urged that UP branches were running at a loss and retrenchment became necessary and ultimately in order to give effect to the policy of retrenchment the applicant was discharged on 30th July, 1949. The Bank representative admitted that this time no permission was obtained because the same was not necessary in the case of retrenchment. The copies of the correspondence with the Labour Commissioner were attached with the written statement but in the course of argument reference was made only to one of the letters of the Deputy Labour Commissioner dated 23rd February 1949 and Profit and Loss Account for the year ended 31st December 1947 and 31st December 1948 which were exhibited Exhibit No 1 and 2 respectively. Exhibit 1 does not relate to any permission obtained in the case of Nanney Chowkidar and be-speaks of certain confirmation of the contents of a letter under reference. The position taken up by the Bank representative was that this Chowkidar was discharged with the consent of the Labour Commissioner but it becomes unintelligible as to why he was reinstated under the instructions of the head office as admitted by the Bank's side as well as evidenced from a letter dated 9th April 1949 filed with the written statement. It appears that the Labour Commissioner was approached for permission but the same was not forthcoming and the applicant was reinstated but some time after in July he was again retrenched on the plea that the branches in UP required retrenchment in the staff. The Bank representative either did not like to bring more evidence on the record to show that this economy was made in the case of some others also and not this Chowkidar only or this evidence was not available. All facts and circumstances put together lead to the conclusion that the Manager wanted to dispense with his services and although he was reinstated in the first instance he was snuffed off soon after. This time no permission was sought either from the Labour Commissioner or from the Tribunal under Section 33. In the absence of any evidence that it was a case of bad labour practice and the termination of his services was due to his Trade Union activities the case is at any rate one of wrongful and unjustifiable dismissal and the discharge order is also bad in law for want of necessary permission. I would, therefore, allow the application and direct the Bank to take him back in service of the Bank within one month from the date of the publication of the award. He will also be entitled for the back salary for 6 months prior to reinstatement with a low rates permissible.

(7) *D L Ku'sheresta*—His grievance is that he was transferred from Agra to Kannur in order to remove him from the sphere of his activities. The Bank representative in reply raised the preliminary objection that the item of transfer does not fall within the scope of the Reference and on merits also the transfer was made due to the exigencies of administration in the same State. The claim fails on the legal objection as well as on merits in terms of B B Singh award. The same is dismissed.

(8) *Shamshe, Singh*—His claim was for the grant of increment which was alleged to have been withheld. No regular claim was filed by the employee and his name was only mentioned in a letter sent by the UP Bank Employees Union along with others.

Shri Gouri Shankar on behalf of the Bank stated that increment in question has already been released. On this assurance the claim will be treated to have been satisfied and is filed.

(9) Application filed by the UP Bank Employees Union, Kanpur concerning (1) Pt Ram Charan (2) P N Gupta, (3) Manu Lal, (4) Mukh Raj, (5) P. P. Vinaik and (6) Ram Charan of Agra Branch—A joint application has been filed by the UP Bank Employees Union concerning the above employees of Agra Branch. The facts put briefly as disclosed from the application are that Agra Branch of this Bank was full of active workers and members of the UP Bank Employees Union. It so happened that the proceedings of the All-India Industrial Tribunal (Bank Disputes) started at Bombay in the month of February 1950 and all the active members and leaders of the Bank Employees Union were participating in these proceedings. The Bank in order to strike at the Union took advantage of their absence and resolved to close this branch but the learned judges of the All-India Industrial Tribunal (Bank Disputes) Bombay moved the Government of India from preventing the Bank authorities to take no such undesirable step. The Bank authorities however managed somehow or other to get rid of the active workers of the Union and in the fulfilment of this object a new Chief Cashier was appointed and he was persuaded not to take guarantee of the sitting employees as Cashiers. He in compliance with the wishes of the Bank authority withdrew the guarantee of the employees mentioned in the application with the result they

were thrown out of employment and new incumbents took their place. It was further alleged that some of these employees who were sacked were directly appointed by the Bank when the Branch at Agra was opened and in point of fact they were not the nominees of the treasurer but subsequently Shri Radha Kissen Baijnath, who was appointed Treasurer, gave guarantee of these Cashiers in pursuance of Clause 9 of the agreement. The relief sought was for the reinstatement of these persons as well as for the payment of arrears of pay and allowances for the intervening period.

Shri Gouri Shankar on behalf of the Bank explained at length the background as well as the previous history as to how these persons were discharged and in this connection his main plank of argument was that the UP branches were running at a loss since 1948 and it so happened that in September 1949 the working Treasurer Shri Radha Kissen Baijnath served a notice on the Bank that he could not continue any more and wanted to resign. The Bank authorities tried to persuade him to continue but ultimately the Treasurer resigned in March 1950 and the Bank had not alternative but to enlist the services of another Treasurer, a Sindhi gentleman, who was appointed as Chief Cashier in April 1950. It was maintained that the discharge of these employees was the outcome of the change in the Treasurership and that the Bank was not even aware as to whether these persons were connected in any Trade Union activities. The allegation of the Union viz. that the Bank persuaded the new Treasurer not to extend guarantee for these employees were categorically denied. On the legal aspect of the question as to whether the employees of the Cash Department are the nominees of the Treasurer, specific reference was made to paragraph 4 of the agreement and it was maintained that the initiative was with the Treasurer in appointing all Cashiers. Replying to the contention that permission under Section 33 was necessary Shri Gouri Shankar submitted that the Bank approached the All-India Industrial Tribunal (Bank Disputes) which was functioning in these days and on their asking to maintain the *status quo* a certain undertaking was given but exception was made in the case of the Cash Department of Agra Branch as evidenced from Ex. 2 (Annexure 11). Reliance was also placed on Annexures 2 to 10 (Exs. 3 to 11). Finally, it was urged that the discharge of these persons was the result of the change in the Treasurership and not to any bad labour practice amounting to victimization.

The above analysis of the facts and circumstances under which these six employees of the Cash Department were discharged is indicative of the two different positions taken up by the parties and the question for determination is as to which one of these satisfied the legal provisions enunciated in the Act or in the legal precedents already pronounced on this subject. The employees in question were admittedly old employees and were working on permanent basis. It is also admitted that no permission of the Tribunal or any other authority was obtained before terminating their services. The stand taken by the Bank in clear terms is that they were the nominees of the Treasurer and on the change of the Treasurership, if the new Treasurer was not prepared to take guarantee for them, the Bank had no alternative but to terminate their services. Reliance was placed on certain terms of the agreement embodied in clauses 4, 9 and 10 of the agreement which are reproduced as under for facility of reference:

Ex. 1.—“4. The Treasurer shall have power to recommend for appointment as Cashiers and Assistant Cashiers suitable persons at the Branches covered by this agreement but whether such persons will be appointed or not shall be at the sole discretion of the Bank.”

“9. The Bank shall appoint a sufficient number of persons as members of the Cash Department staff who shall be the servants of the Bank and the Bank shall determine their respective salaries. And their appointments and dismissals will be entirely at the discretion of the Bank or the person acting for it.”

“10. The Treasurer agrees to accept the appointment of and to be responsible to the Bank for the good conduct of all members of the Cash Department staff appointed by the Bank and at present in the employ of the Bank at the said Agra Branches and of all subsequent members who may be so appointed.”

Now Clause 4 of the Agreement clearly lays down that although the Treasurer was given the power to appoint all Cashiers and Assistant Cashiers under the Agreement, it rests in the discretion of the Bank to approve the appointment or not. Similarly in Clause 9 it is specifically mentioned that the appointments and dismissals will be undoubtedly at the discretion of the Bank or the persons acting for it. In the light of the terms of this Agreement the matter hardly requires any

further elaboration and furthermore I have already held in more than one cases in Delhi and other States Bank cases that the employees of the Cash Department are as good employees of the Bank as others and the Bank could not escape the responsibility in regard to the security of their service or other conditions of service. Shri Gouri Shankar also admitted in his arguments that the employees of the Cash Department are also entitled to leave rules and Provident Fund benefits like others and as such it is idle to urge that their employment rest at the sweet-will of the Treasurer and on the change of the Treasurership their services had to be terminated *ipso facto*. This point has been discussed at some length in an application under Section 33 filed by the Imperial Bank of India, Calcutta, for dismissal of some of their employees of Cash Department (Published in the *Gazette of India* dated 27th January, 1951). Their lordships of the All-India Industrial Tribunal (Bank Disputes) also held that the employees of the Cash Department are the employees of the Bank and not the nominees of the Treasurer. Shri Gouri Shankar while referring to this dictum contended that the same award has since been declared void and is not binding. The reasoning and the argument, however, on the basis of which that finding was given, however, stands for all prudent persons to follow or reject on good reasons. I need hardly add that I respectfully agree with the finding given by their lordships which has been followed by me in some previous cases. In the result I have no alternative but to come to the conclusion that the order of discharge of these employees was bad in law and was not warranted by the facts and circumstances of the case as well. I would, therefore, direct the Bank to take back the following in their service, if they are available and desire to come back.

- (1) Pt. Ram Chand,
 - (2) P. N. Gupta,
 - (3) Manni Lal,
 - (4) Mulkh Raj,
 - (5) P. P. Vinalk, and
 - (6) Ram Charan,
- of Agra Branch

In view of the fact that the position taken up by the Bank upto now was adopted in all good faith, I would allow them only three months back pay with allowances admissible prior to reinstatement. This will come into effect within one month from the date when the award becomes effective.

(10) *Reduction in the rates of increment admissible to the staff of the Bank in all Branches in U.P.*—This application related to a general complaint that the rates of increments admissible to the staff of the Bank in all branches in U.P. were reduced. The claim mainly was that the staff of different branches in U.P. were getting higher rate of increment as awarded by Shri B. B. Singh and that the Bank all of a sudden reduced the rate of increment. The prayer was to restore the higher rate of increment as was being paid before to all the staff in U.P. from 1st January 1950 and also to pay of the arrears accruing therefrom. The name of the employees were not mentioned and it was only stated in general that the whole staff was affected by this change.

The Bank in written statement submitted that the allegations were vague and no specific instance was cited. The Bank was unable to deal with them. This was also added that they have on further consideration granted some of the employees increment according to Bank's scale and for the rest, the matter is still under consideration.

In view of the vague and indefinite nature of the application and in the absence of any particulars given in the application itself, the application must fail and is dismissed.

(11) *Menial staff of Kanpur Branch of the Bank Re. Implementation of interim relief Award, etc.*—This application relates to the non-implementation of the Interim Relief to the menial staff of Kanpur Branch. The specific names given therein are as under:—

- (1) Shiv Bakhsh Singh, Jemadar,
- (2) Ram Behari Bajpai,
- (3) Ram Nath,
- (4) Shiv Raj Singh, Peon,
- (5) Sant Prasad, Peon.

The facts disclosed from the application shortly stated are these. That the benefit of Interim Relief award of the All-Indian Industrial Tribunal (Bank Disputes) eligible to the menial staff was not given and the annual increment and Dearness Allowance had been so adjusted that on the one hand they have been given in conformity with B. B. Singh award and on the other simultaneously deductions have been effected in the Dearness Allowance and as such the increase in Dearness Allowance was a corresponding loss so far the Dearness Allowance was concerned. A statement showing the said increase in salary by way of increment and decrease in Dearness allowance was enclosed against each individual member in support of the claim.

The Bank representative over and above the reply made in the written statement argued that in the first place the claim which is virtually based on the interim award is untenable inasmuch as the Interim Award does not hold the field having been declared void by the Supreme Court. On merits the Bank representative further argued that according to the calculations, no amount is due to any of the employees under the Interim award as evidenced from Ex. 1 produced in support of the averments. I am afraid that the relief claimed on the basis of Interim award which has been declared void by the Supreme Court, has become infructuous with the result that the application stands dismissed.

(12) *Employees of Kanpur Branch viz. (1) K. D. Chaturvedi, (2) S. N. Shukla, (3) Brij Lal Pandey, (4) Bhairon Prasad Seth, (5) Harish Chandra Seth and (6) Shri Ram Shukla, regarding increase in the rate of Dearness Allowance.*—The application was preferred on behalf of the above-named employees of Kanpur Branch by U.P. Bank Employees Union and the same relates to the decrease in the Dearness Allowance. The facts disclosed by the application briefly are that the Head Office has not implemented the Interim Relief Award under which the employees were entitled to 331/3 per cent. over the Dearness Allowance from January 1949 under B. B. Singh award. It was, therefore, claimed that the Banks grade quoted in the application had become a part and parcel of B. B. Singh award in terms of the Government order and the employees were further entitled to a further increase of 331/3 per cent. over the present Dearness Allowance of Rs. 30 or 40 per cent. of the salary with a minimum of Rs. 33-5-4. This application was made on behalf of six employees, out of whom (1) Shri Ram Shukla, (2) Bhairon Prosad Seth and (3) Brij Lal Pandey have been dealt with separately in this connection.

The Bank's reply to the application was two-fold: (1) That the Interim Award on the basis of which this increase is claimed is void as argued earlier in other cases. That according to the calculations made in a statement (Ex. 1) in supersession of the statement already enclosed with the written statement, the amount of Re. 1-5-4 was due to them and the statement filed by the Union was not correct. It was further stated that amount due has been paid to the nearest anna and as such the claim is not tenable. It was further stressed that the calculations made by the Employees Union on behalf of the subject are misleading because no regard was paid to the directions with regard to the deductions and adjustments in para. 8 of the Interim award. The claim is based on the terms of the Interim award of the All-India Industrial Tribunal (Bank Disputes) which has since been declared void and fails on this short ground. The same is disallowed.

(13) *Jagmohan Das Shah.*—The applicant joined the Bank as a Godown-keeper on the security of the Chief Cashier Shri U. A. Chandiramani, who was replaced by another gentleman and was discharged on 30th June 1950. His grievance is that he was senior to Shri Sahaney and Shri U. A. Chandiramani at whose security he was appointed was not consulted at the time of discharge from service. It was also contended that no permission under Section 33 was obtained and on that account also the order of discharge was illegal.

Shri Gouri Shankar on behalf of the Bank opposed the application on the point of jurisdiction. It was contended that the cause of action in his case arose after this Reference was made to the Tribunal and it should have been treated by a separate Reference. On merits Shri Gouri Shankar submitted that the employee was on probation and was working on a temporary basis in connection with the Indra Spinning & Weaving Mills, as borne out from the appointment letter placed on the record (Ex. 1). It was further argued that the Chief Cashier was duly consulted in replacing him and it was wrong to say that he was not consulted.

So far the legal objection is concerned the same is devoid of any merit as no specific time was fixed in the Reference for filing the statement of claim and

I do not agree with the Bank representative that any separate Reference was required in his case. On merits, the appointment letter (Ex. 1) which purports to have been signed by Shri Jagmohan Das Shah accepting the appointment on the terms and conditions detailed therein in token of consent negatives the claim. It is specifically mentioned in the said letter (Ex. 1) that he will be on probation for a period of six months. The letter of discharge (Ex. 2) was also signed by him wherein it was stated that no notice or salary in lieu thereof is due to him in this connection. Shri Shah furthermore asked for a certificate as evidenced from a copy of letter (Ex. 3) wherein he stated that the same was required for submission for his selection in the Indian Railway Service.

This documentary evidence clearly establishes that he was a temporary hand and he was discharged after a certain period. The claim appears to be frivolous and the same is dismissed.

(14) *Non-implementation of late Shri B. B. Singh Award with retrospective effect to Accountants of U. P. Branches.*—Shri Kakkar while stating the case on behalf of the Employees Union in this application submitted that no specific case has been cited in the application although reference has been made to the Accountants of Agra Branch. It is of course a general matter for the determination of certain principles as to whether the B. B. Singh award in respect of Dearness Allowance could be implemented. In this respect one more letter dated 8th June 1949 from Superintendent of the Bank to the Agra Branch was produced (Ex. A). The Union representative further submitted that all facts regarding the point involved have been given in the application in detail and need not be amplified.

Shri Gouri Shankar in reply also stated that the points raised have been elaborately dealt with in the written statement. He, however, added that the matter now brought before the Tribunal in respect of Dearness Allowance is beyond the jurisdiction of this Tribunal because it is not covered by the items mentioned in the Schedule and as such does not fall within the ambit of Reference. It was further argued that only those points can be considered under this Reference which arose after 13th June 1949 and as B. B. Singh award was made in April 1949, the implementation of that award was beyond the jurisdiction of the Tribunal. It was further stressed that no specific case has been cited and as such the question of implementation of B. B. Singh award in any specific case does not arise. The next argument advanced was that Accountants in B. B. Singh award and that of the Conciliation Board award were already treated in some individual cases of workmen and as such, citation of specific names of aggrieved persons was necessary.

Now this claim was made in general and specific cases were not cited as to whose increments were withheld and who were affected by the non-implementation of the B. B. Singh award. In Schedule II attached with the Reference [No. LR2(273), dated 21st February 1950] under which these cases are being heard it is laid down that specific cases are to be cited by the employees. It would be rather going beyond this direction if cases in general are to be considered as an abstract matter. B. B. Singh award moreover was admittedly given in April 1949 i.e., earlier to 13th June 1949. Shri Kakkar, however, stated that two months' time was given for the purpose of enforcement and as such the date for the award could be 18th June 1949 i.e., after 13th June 1949. This argument appears to be fetched and the implementation of the award, moreover, does not form a part of the items referred to under this Reference. The application accordingly fails on both these counts and the same is disallowed.

VII. Reference No. 22 of 1950

HABIB BANK LTD.

APPEARANCES: (None for the employees.)

Shri P. D. Buch, Accountant, Bombay Branch, for the Bank.

(1) *R. P. Tandon.*—His case as disclosed from the application and the facts stated by Shri Buch is that he was working in the Habib Bank, Kanpur, as Assistant Accountant, and was holding regular power of attorney. It was in the beginning of 1949 that he was asked to go to Agra Branch to which he agreed but he had to avail of one week's leave due to serious illness of his daughter and during that leave period he received a letter from the management informing him that the Bank had terminated his services. It was alleged that it proved a sudden and unexpected shock to him as his child was on death bed and expired next morning. It was stated that the order of discharge was vitiated under Section 33 because no express prior permission was obtained from the Tribunal. He wants reinstatement

and payment of emoluments for the intervening period and other attending privileges of Provident Fund and bonus.

Shri Buch on behalf of the Bank in reply raised the preliminary objection that Shri Tandon was an officer and does not satisfy the definition of workman as he was holding power of attorney and was an Assistant Accountant. On merits it was submitted that the deposits in Kanpur Branch were falling rapidly and it was on the basis of economy that his services were dispensed with as officers cadre was reduced from 3 to 2 and he was the juniormost. It was further argued that Bihar Bank Ltd. had applied under Section 33 for permission to discharge some of the employees but the same did not pertain to this man as he was a case of retrenchment and permission was not required. It was also urged that the applicant had already moved the Conciliation Officer and his application was rejected as evidenced from copy of the order of the Conciliation Officer (Ex. 1).

It appears to be a hard case that this employee was thrown out of employment when he had gone on leave without calling upon him to explain as to why his services were going to be dispensed with. The plea advanced by the Bank that permission under Section 33 was not required in the case of retrenchment again is also devoid of any substance inasmuch as permission was sought for in the case of others and it was required in his case also. At any event the employee was entitled to retrenchment relief besides salary for one month in lieu of notice or other arrears regarding his earned leave etc. The difficulty, however, in this case is that this matter was referred to the Conciliation Officer as borne out by Conciliation Officer's order dated 18th March 1950 (Ex. 1) and his claim was rejected in the light of the receipt given by him to the Bank in final settlement of the claim. Copy of the receipt (Ex. 2) was also placed on the record which supports the view adopted by the learned Conciliation Officer (Central). These documents Exhibits 1 and 2 furnish complete answer to the claim and the same stands dismissed.

(2) *Mastaq Ali Khan*.—His case is that he was working as a motor driver for the last 3 years when in January 1950 he was served with a month's notice that his services were no longer required. It was alleged that no permission of the Tribunal was obtained under Section 33 and as such the order was bad in law.

Shri Buch on behalf of the Bank in reply stated that the business in Kanpur was falling rapidly and the management wanted to reduce the expenses on economic basis and as the motor car was sold off, his services were dispensed with. It was further argued that permission in his case was obtained from the Regional Labour Commissioner as evidenced from copy of order dated 29th April 1950 (Ex. 1). It was further stated that the applicant received all his dues in full satisfaction of his claim (Ex. 2) and the claim be considered to have been withdrawn.

Exhibit 1.—(Copy of the permission of the Labour Commissioner) Clinches the matter beyond any manner of doubt that his services were terminated with the consent of the competent authority and after having secured requisite permission.

Exhibit 2—Receipt of payment of dues in final settlement also resolves the matter and the claim thus is devoid of any merit. The same is dismissed.

VIII. Reference No. 25 of 1950

BANK OF BIHAR LTD.

APPEARANCES: Shri Brij Mohan Nath Kaul in person.

Shri Ram Nath Seth, Advocate, assisted by Shri N. R. Patial Manager, Kanpur Branch, for the Bank.

(1) *Brij Mohan Nath Kaul*.—His case is that he joined the Bank's service 11 years back and was an old employee. He was discharging his duties conscientiously and to the entire satisfaction of the management and was given a special increment by the Head Office in the year 1943. He worked as Manager at different branch, but at Kanpur he brought the branch on sound footing. During his tenure of office at Kanpur it so happened that Messrs. Bhairoprasad Sriniwas, a leading merchant of that place approached him to discount his bills directly. Messrs. Matad Bhagwandas also recommended and some independent enquiry was also made after taking into consideration the hard fact that the previous bills tendered to Messrs. Matad Bhagwandas were honoured the applicant started to discount their bills. They however proved to be cheats and the Head Office took exception to his discounting 2 or 3 bills and informed him by letter dated 12th November 1949 that commitment of this type should not be made at large scale unless prior permission is received from the Head Office. It was urged that whatever he had done it was done in all good faith; and he rather became a victim to the fraud perpetrated upon him by Messrs. Bhairoprasad Sriniwas. Finally it was submitted that the matt-

was reported to the police and is still pending and before final decision arrived at in Court regarding this matter, his discharge from service was not warranted by the merits of the case. Replying to the objection raised by the other side in the written statement that the applicant was an officer and does not satisfy the definition of Section 2(s), it was argued that he was indeed an officer but as his case has been sponsored by the Union it amounts to industrial dispute as defined under 2(k) of the Act. The Bank representative explained the position in regard to the discounting of bills at some length and maintained that the bills as admitted by the applicant himself proved to be forged ones and the amount involved was about two lacs and half out of which about Rs. 71,000 were entered in the name of Messrs. Bhairoprasad Srinivas. Reliance was placed on the correspondence between the head office and the applicant as evidenced from Exhibits 1 to 20 as well as the charge sheet (Ex. 21) and the comparative statement of working income and expenses since June 1949 to March 1950 (Ex. 22). On the strength of this documentary evidence Shri Pathak, Bank representative, stressed that the action of the applicant in discounting bills was against the direction of the Head Office and he was in league with the borrowers. It was also emphasised that when the head office refused the proposal, there was no question of anticipated sanction and the applicant was dealing on his own responsibility in utter disregard to the behests of the head office. Furthermore none of the bills were paid in time and this fact should have put him on guard not to discount any further bills but he continued and as such he was obviously doing contrary to the directions of the head office. On the legal aspect of the question Shri Pathak argued that the applicant was admittedly an officer and his case does not fall within the Reference.

As the matter is alleged to be sub-judice on the Criminal side I need not adjudge the facts of the case. The applicant admittedly worked as Manager at several branches and as such he does not fall within the definition of workman and is an 'Officer' as held by me in Delhi Bank Disputes Award. His case accordingly fails for want of jurisdiction and the same is dismissed.

(2) *Santosh Kumar Banerjee*.—The facts as disclosed from the application and stated by Shri Seth are as follows: Shri Santosh Kumar Banerjee joined as a clerk in Ghazipur branch on 14th October 1944 and worked honestly and diligently but due to certain differences with the Manager he was reported against to the head office confidentially for which a formal enquiry was made. He was transferred to Kanpur office in July 1948 where he served in the capacity of Accountant but no officiating allowance was paid to him. He accordingly complained to the Labour Commissioner, Kanpur, for the payment of the allowance and the Labour Commissioner gave finding in his favour to the effect that he was to be designated as Accountant and to be paid the salary in the scale of an Accountant. This infuriated the Branch Manager and the Head Office and the management began to harass him. He was transferred telegraphically on 11th June 1949 from Kanpur to Mirzapur in order to victimize him and was ultimately discharged on 3rd February 1950 without seeking the permission of the Tribunal under Section 33.

Shri Seth in reply on behalf of the Bank stated that the conduct of the applicant when he was working at Ghazipur was not satisfactory. He was responsible for instigating false complaints against the Manager which became the subject of enquiry and it was found that he was at the bottom. He himself admitted this and apologised as evidenced from his statement dated 25th July 1948 (Ex. 1). Shri Banerjee did not improve in his behaviour after this and sent another report on 30th June 1948 (Ex. 2) against the Manager. He was accordingly transferred to Kanpur where too he continued his offensive activities and sent another complaint dated 17th August 1948 (Ex. 3), whereupon he was warned by the Head Office by letter dated 23rd August 1948 (Ex. 4) to behave properly. He had to apologise again as borne out by letter dated 27th August 1948 (Ex. 5).

In addition to this it was also argued that Shri Banerjee's work was not satisfactory and he was called upon to explain no less than 3 times. It was on 23rd July 1949 when the applicant was found pilfering the confidential record of the office, he was called upon to explain and this time the explanation was again found unsatisfactory and he was given warning this time again on 18th August 1949 (Ex. 6) and was transferred to Mirzapur; but it so transpired that Mirzapur branch proved an uneconomical unit and it was closed. In consequence the services of Shri Banerjee were retrenched along with others. On the strength of the documentary evidence adduced it was maintained that the Bank was perfectly justified in terminating his services because he became surplus and his previous record was not satisfactory. It was further argued in this connection that the employer was within its right to retrench when any branch proved uneconomical unit without securing the prior permission because Section 33 of the Act does not

cover the cases of retrenchment. Reliance was placed on a Bombay decision by Justice Maramkar, wherein it was held that permission was not needed in the case of retrenchment.

Now the applicant had put his case in the manner as if nothing had happened in the course of his service and he was victimised when he approached the Labour Commissioner for the payment of allowance which was granted to him. On the other hand the Bank has referred to various complaints made against him and in support of those produced documentary evidence comprising over documents (Exhibits 1 to 6). It was also urged on behalf of the Bank that his work was found unsatisfactory and he was called upon to explain no less than three times and that on one occasion in July 1949 he was found pilfering the confidential record of the office and was given a warning. What actually happened in this case was that he was not discharged from service on account of these charges or gross negligence of duty of misconduct but on the plea that he had become surplus to the requirements as Mirzapur branch was closed. Consequently there is no need of going into the charges and the question for determination is as to whether permission was not necessary in cases of retrenchment as urged by the Bank representative. Now the legal aspect of this question has been considered in previous awards and now again discussed at some length in the case of P. K. Sharma of Bharat Bank Ltd., in this award *infra* and held that in cases of retrenchment, prior permission under Section 33 is necessary. In the result, the order of discharge cannot be sustained in law. Coming to the point of relief however I do not think that it is a fit case for directing reinstatement, regard being had to his record of service with the Bank, described above. He will get the usual retrenchment relief by way of compensation at the rate of half month's salary plus allowances for each completed year of service. The Bank is directed to carry out the order within one month from the date of the operation of the award.

(3) *Closure of Mirzapur Branch*

(4) *Closure of Ghazipur Branch*

These two causes were preferred by the U.P. Bank Employees Union by their letter dated 4th April 1950 with the only remark *viz.* termination of services of the whole staff. No particulars were given nor the names of the staff were mentioned. The list of the staff has by this time not been brought on the record in order to determine as to who those employees are and what are their designations. None of the representative of the U.P. Bank Employees Union has come forward to represent and the case was heard *in absentia* under Rule 19 of the Industrial Disputes (Central) Rules as already stated in the detailed order above.

The Bank in their written statement admitted the factum of closure as well as termination of the services of the staff. The reason assigned for closing the two branches given was that both of them had been running at a loss and the Bank could not afford to maintain those branches. It was further alleged that the termination of the services of the staff was not the result of any bad labour practice but it was due to retrenchment and in point of fact the Directors had already decided upon closing the above branches prior to June 1949 by their resolution dated 16th May 1949; but on the representation made by the public in this regard, the branches continued working until 31st December 1949. No material progress, however, was witnessed and consequently the original resolution of closing the branches was put into effect.

It is a truism that some of the employees working in these branches must have suffered and according to the finding given by me in Delhi Bank Disputes Award, in the case of retrenchment some retrenchment relief was to be given to them. But the difficulty which comes in the way is that the U.P. Bank Employees Union did not care even to give the names of the employees working at Mirzapur and Ghazipur branches, and one is at a loss to know who they were and as to whether they satisfied the definition of workmen or not and what was the length of their service which is an important factor in determining the retrenchment relief. Bank's reply to the claim must have gone to the Union but still they did not care to file any better pleadings until the time of hearing. Under these circumstances, I have no alternative but to hold that the claim was a vague and indefinite one and no cause of action was disclosed for the purpose of reinstatement or retrenchment relief in respect of the employees of these two branches. The Bank in their written statement furthermore averred that the services of the employees were terminated under due intimation to the Labour Commissioner and that the Board of Directors decided for the closure of the branches prior to June 1949 by their resolution dated 16th May 1949. These factors also go to show that the employees did not make any protest at the proper time and the Union in a vague indefinite manner only filed this claim in the form of intimation dated 4th April 1950 wherein it was stated that the petitions of the applicants will be submitted in due course

but they were never submitted. The result is in the first place, there is no claim before me and secondly if this letter of 4th April 1950 be treated as such it discloses no cause of action and must be rejected.

IX. Reference No. 26 of 1950

BANK OF BIKANER LTD.

APPEARANCES: Shri S. L. Gupta in person.

Shri Babu Lal Misra, Advocate assisted by shri B. R. Swamy, Maanger, for the Bank.

(1) *Agia Ram Jamba*.—The case of the applicant as disclosed from the application is that he joined the Bank's service in the year 1948 at their Muzaffarnagar branch as B grade clerk. He was a member of the Union and the Bank authorities did not like this. In the month of July 1949 the staff of Muzaffarnagar branch applied the Uttar Pradesh Government to get them covered by the B. B. Singh award; but the management forced the staff to withdraw that application on the point of dismissal. It was alleged *inter alia* that his confirmation was withheld by the Bank authorities due to Trade Union activities and it so happened that in May 1949 he fell ill and had to apply for one month's leave on Medical Certificate. The leave was not granted and on the top of it his services were terminated on 24 hours notice on 4th July 1949. It was urged that his was a case of victimization and the relief sought was for reinstatement.

The Bank in their written statement denied the allegations made by the applicant and submitted that he joined the service on 11th September 1948 on probation for 6 months as evidenced from his letter of appointment (Ex. 1). He applied for one month's leave in May 1949 and the same was granted and his case was to be considered for the purpose of confirmation and a report was called for. On the receipt of the report the confirmation was further deferred by 3 months (Ex. 2). The applicant however applied for one month's leave in extension but the extension was not granted as the subject was a temporary hand and his services were terminated in July 1949 (Ex. 3). It was maintained that the applicant was a probationer and was not a confirmed employee and the employer was within its right to terminate his services if the employer was not satisfied with his work.

The one important fact that he was working as a probationary hand was not disclosed by the applicant in his application but the same is amply proved by documentary evidence adduced on behalf of the Bank and the question of confirmation as held previously is one which rests in the discretion of the employer and was not to be made as a matter of right automatically. In the circumstances the case does not call for any interference and is disallowed.

(2) *S. L. Gupta*.—The applicant joined the Bank's service in 1947 and was working as a Senior Clerk. His services, however, were terminated on the 5th July 1949, on the plea that the applicant left the station without seeking the permission of the management and had thus absented himself from duty. Shri Gupta arguing his case submitted that when he was working at Bikaner he applied for 27 days leave on the ground of sickness and the same was granted to him. Before the expiry of the leave, he sent an application for extension of leave on account of illness of his grandmother, the same was also granted until 8th July 1949. The applicant, however, notwithstanding of distress in the family joined his duty at Bikaner on 5th July 1949 and made another application for the grant of 20 days leave but the management was not prepared to grant him that although 38 days leave was due to him under rules. He was upset on this attitude of the management, who was not prepared to grant leave although the same was due and on informing the Section-in-charge left for Kanpur. When he reached Kanpur he was much too busy in his own affairs and did not inform the Bank any more. On the 7th July intimation was received that his services were dispensed with whereupon he moved the RLC. He made enquiries and the case went up for hearing to All India Industrial Tribunal (Bank Disputes). Their lordships of the All India Industrial Tribunal, however, did not decide his case because the cause of action arose after 13th June 1949 and the same was sent to this Tribunal.

Shri Babu Lal Misra, on behalf of the Bank, raised a preliminary objection that the case has emanated from Bikaner State, which is one of Part B States and as such this Tribunal is not competent to try it under the Industrial Disputes Act of 1947. On merits the Bank representative stated that the applicant was working initially at Kanpur which is his home place and he wanted to remain there and avoided to go anywhere else and this factor was responsible for his absence. Shri Misra further explained that on 1st March 1948 he was transferred to Panna, but he

refused to proceed to Panna on the ground of his wife's illness. Ultimately he joined there on 6th March 1948. Giving more facts it was stated that during his stay at Panna he applied for more than one occasions for leave and on one occasion he was refused. Then he applied for re-transfer and he was brought to Kanpur again but after about six months he was transferred to Bikaner on an increment of Rs. 17 made in his salary. He, however, made a representation to the Regional Labour Commissioner but he did not interfere in the matter as evidenced from Ex. 1. He also made a representation to the Bank authority stating therein frankly that he wanted to stick to Kanpur and could not afford to go outside but the decision was not reviewed. The applicant ultimately submitted to the order of transfer as borne out by his letter dated 21st April 1949 (Ex. 4). He again applied for leave on the 25th April 1949 for three weeks on the ground of his marriage but it was not granted. He again applied on the ground of illness and this time he was granted leave but he again asked for extension and he was informed by letter (Ex. 5) that no leave was due to him and accordingly the leave was granted without pay. Replying to the contention of the other side that leave was due to him as borne out by the chart given in the rejoinder dated 23rd April 1951 at page 3, it was argued that the calculations made in the chart are not correct inasmuch as credit for leave for the probationary period and Casual Leave was also taken in the chart while under rules of the Bank leave due to him was only 60 days. Reliance was also placed on the letter of appointment dated 14th February 1945, it was further stressed that even if the probationary period was added, the amount of leave would come to 70 days and not 100 days. His services were terminated because he absented from duty from 4th July 1949 without permission as evidenced from order dated 7th July 1949 (Ex. 6). He, however, sent an application dated 4th July 1949 addressed to the General Manager asking for 20 days leave whereupon the report was taken that he had got a job in Allahabad Bank and he had absented himself from duty and hence his services were terminated (Ex. 7). Finally, it was submitted that the applicant has got a new job in some other department and the application for reinstatement is not made in good faith.

Adverting to the legal objection raised in this case, I do not think it is necessary to repeat all the reasons given in the previous awards that this Tribunal has no jurisdiction over cases which fall under the old Act of 1947 before the amended Act of 1950 came in force in Part B States. Bikaner State admittedly is in Part B States and did not form a part of the British India before the new regime came into existence. The claim accordingly fails for want of jurisdiction. On merits also on the appreciation of all the facts stated by both sides it appears that Shri Gupta in the alleged justness of his cause that leave was due to him took the law into his own hands and left without enquiring as to whether the leave was sanctioned or not by the authority concerned. If this be the criteria in availing of leave due, I do not think any administration can run on smoothly. It is a different matter that the leave should have been granted, but it does not give any right to the other side to absent himself for a pretty long time and then make a claim. The only course left for the employer when the employee was not attending his duty was to bring on the record that he had vacated his post. This however does not resolve the point involved and the question arises as to whether the period of absence should have been treated leave without pay or it amounted to misconduct. I do not think that any hard and fast rule can be laid down and to my mind the decision shall always rest on the cause for which the leave was applied for. In case of serious illness of a near relation or his own serious illness, the onus would lie on the employer to establish justification for non-granting the leave while on the other hand in cases where leave is asked for on a flimsy ground to run away from the post of his duty or even on the excuse of illness of near relation, the onus would lie on the applicant that absence was unavoidable. On the appraisement of the evidence brought on the record (Exhibits 1 to 7) I have no hesitation in holding that the attitude taken up by the applicant was not at all justified. I would, therefore, dismiss the claim on merits as well.

X Reference No. 32 of 1950

BHARAT BANK LTD.

APPEARANCES: Shri R. N. Garg in person.

Shri G. D. Chawla in person.

Shri P. B. Srivastava in person.

Shri A. C. Kakkar assisted by Shri J. N. Mehrotra, V. N. Sekhri
B. K. Porwal, P. C. Jain, Ram Lobaya, B. D. Sharma, etc. for
the U.P. Bank Employees Union (appeared at Dehra Dun and
Naini Tal sittings).

Shri S. P. Misra in person.

Shri R. N. Rastogi, Superintendent, assisted by Shri M. M. Gupta, for the Bank (appeared at Kanpur, Dehra Dun and Naini Tal sittings).

Before the hearing of the Bharat Bank cases commenced at Kanpur, Shri Rastogi, the Bank representative, raised a legal objection to the effect that Bharat Bank has ceased to be a Banking Company after 10th March 1951 and this Tribunal is not competent to hear the cases of the employees of Bharat Bank mentioned in the Cause Lists against the name of Bharat Bank, because the Industrial Disputes Act no longer applies in the case of Bharat Bank. In view of the importance of the objection, it was deemed necessary to deal with this objection at the outset before taking up the individual cases and both sides were called upon to argue on the preliminary objection. Shri R. N. Garg, the first employee in the Cause List, however, pleaded his inability to reply to the arguments advanced by the Bank representative on the legal aspect of the contention and furthermore in view of the fact that some of the cases of Bharat Bank employees emanating from U.P. State according to scheduled programme were yet to come up at another sitting at Naini Tal, it was ordered that arguments on this question will be heard later on. It so happened that the representatives of U.P. Bank Employees Union by that time participated in the second and third sittings at Dehra Dun and Naini Tal respectively and full arguments were heard on this legal objection once more. The Bank representative argued that Bharat Bank has already entered into an agreement on the 10th March 1951 with the Punjab National Bank as evidenced from the copy of the agreement (Ex. 1 in Shri R. N. Garg's case) produced in support of the contention; and in the terms of the agreement the liabilities of Bharat Bank to the tune of ten crores were transferred to Punjab National Bank together with the assets of equivalent value. The argument was further stressed that in pursuance of this agreement, all the branches of Bharat Bank in India have ceased to transact the business of banking and in the light of the definition of 'Banking Company' given in the Industrial Disputes Act in Section 5 of Banking Companies Act, Bharat Bank can no longer be treated as a Banking Company. Shri Rastogi in this connection referred to the definition of 'Banking Company' given under Section 5 as well as the definition of Banking Company given under 2(bb) of the Industrial Disputes Act and maintained that these two definitions read together would show that the Industrial Disputes Act applies to a Company which transacts the business of Banking and has branches in more than one State. As Bharat Bank has ceased to transact any business in India it has ceased to be a Banking Company within the meaning of the Industrial Disputes Act. It was next argued that Industrial Disputes Act was brought on the statute in March 1947 and at that time a Banking Company was not included in the Interpretation Clause and it was sometime after by virtue of Industrial Disputes (Banking and Insurance Companies) Act, 1949 which received the assent of the Governor General on the 14th December 1949, that the definition of Section 2(a) was amended so as to include a Banking Company which was defined in Clause 2(bb). No amendment however, was made in the definition of 'industry' and 'industrial dispute' as existed in the Act originally and as such a Banking Company cannot be considered as 'industry' within the meaning of the Industrial Disputes Act as originally enacted in March 1947. It was emphasised that 'Banking Company' by itself is not an industry in the ordinary connotation of the term "industry", but assuming that it is an industry by virtue of the amendment of 1949 it would be an industry which is carried on under a special licence obtained from the Central Government under the Indian Companies Act. It was concluded that if Bharat Bank has ceased to be a Banking Company it has likewise ceased to be an employer within the meaning of the Industrial Disputes Act and the ordinary meaning of the employer would not apply in this case. Finally, it was submitted that Bharat Bank at present is not working excepting for the work of the realization of debts and the question of reinstatement of any one of the employees which has been prayed for in some of the claims does not arise. Shri Rastogi, however, pleaded his inability to say anything in regard to the payment of arrears if any such question on merits comes up before the Tribunal for the purpose of adjudication.

Shri A. C. Kakkar, the recognised representative of the U.P. Bank Employees Union arguing on behalf of the employees in general controverted the argument of Shri Rastogi and maintained that Bharat Bank is still a Banking Company and the points made by him in his arguments may well be summarised as under:

- (1) That only some assets and liabilities have been transferred to Punjab National Bank while doubtful debts are still retained by Bharat Bank to deal with.

- (2) That the share capital with which this Bank started is still being retained by the Bharat Bank as well as the Reserve Fund. Reference was made to the definition of Company given under Clause (d) of Sec. 5 of the Banking Companies Act in contra distinction to the definitions of Banking Company in 2(bb) and 'Industry' in clause 2(j) of the Industrial Disputes Act.
- (3) That the definition of 'Industry' is very comprehensive and includes all sort of business as realisation of debts etc.
- (4) That Bharat Bank is still being recognised by the appropriate Government as a Banking Company as borne out by *Gazette of India Extra-ordinary*, dated 2nd May 1951 (page 784)—Group C—while considering the appointment of Conciliation Board wherein in general demands Bharat Bank has also been taken as C class Bank.
- (5) That the agreement by itself is not a conclusive proof in the absence of any decision arrived at by shareholders regarding the winding up of the Company.
- (6) That no notification has yet been promulgated by the Central Government in regard to the cessation of work of Bharat Bank or its closure.
- (7) That the name of Bharat Bank was registered under the Joint Stock Companies Act and in the absence of any application to the Registrar of Joint Stock Company, the Company cannot be treated to have ceased to be a Banking Company.
- (8) That the Directors and the shareholders are still on the rolls and their work has not ceased.
- (9) That there has been no official pronouncement or that of the shareholders by any resolution in regard to the position taken by the Bank representative and in the absence of that the Bank will be treated as a Banking Company as initially mentioned in the Schedule attached with the Reference.
- (10) That the action taken by the Bank in terminating the services of the employees recently without obtaining the prior permission also shows that it has been working as a Banking Company.
- (11) That reference was made to Sec. 7 of the Banking Companies Act at page 4 and it was argued that the word 'Bank' is still being retained by Bharat Bank.
- (12) That the Provident Fund and Security Deposits of the employees are still lying with the Bharat Bank, whose representative are on the Board of Trustees.

Shri Rastogi in reply further added that the majority of the points urged by the other side have no bearing on the question posed by him because they relate to the word 'Company' in general and not 'Banking Company'. It was submitted that 'Company' as such and 'the Banking Company' are distinguishable so far their functions are concerned. On the question of transfer it was also asserted that entire deposit liabilities have been transferred in favour of Punjab National Bank and it was wrong to say that some of the liabilities and assets have been transferred. Lastly it was submitted that the agreement has been approved by the shareholders of both Banks in a joint meeting.

Now this preliminary legal objection raised on behalf of the Bank could not be decided like a Court at the very outset and so it became necessary to hear all the claims of Bharat Bank employees on merits also and the decision of this all important question was left to be taken at the time of giving the award. The same must be disposed of now before taking up the cases of this Bank *ad seriatim*.

On the material brought on this record and on the full appreciation of the arguments of both sides I have come to the conclusion that the objection, however, specious and plausible it may look, collapses when put to the test of scrutiny of the actual state of affairs still prevailing in the administration of the Bank. It is a well known fact that the Banking Companies in India were governed by the Indian Companies Act before the law relating to Banking Companies was amended and consolidated under the Banking Companies Act of 1949. In the preamble it is no doubt stated that it was expedient to consolidate and amend the law relating to Banking Companies but on going through the whole Act it appears that the Act consolidates the law relating to the Banking Companies to this extent as it is enacted in addition to and not in derogation of the Companies Act of 1913

because several provisions of the Indian Companies Act still apply to the Banking Company. Furthermore, the law relating to Banking Companies as Joint Stock Companies is still regulated by the Indian Companies Act of 1913. Section 2 of the Banking Companies Act of 1949 also elucidates the point further when it states that the provisions of this Act shall be in addition to above as hereinafter expressly provided in derogation of the Indian Companies Act 1913 and no other law for the time being in force. Accordingly it seems clear to me that the legislature in enacting the Banking Companies Act has added something more pertaining to Banking but has kept the provisions of Indian Companies Act intact to be applied to the Banking Companies and as such the additional provisions made in the Banking Companies Act do not detract anything from the provisions of the Indian Companies Act. Accordingly the contention raised by the Bank cannot be considered within the narrow compass of the provisions of Banking Companies Act and the question shall have to be probed further with the application of the Indian Companies Act as well. In this respect before coming to the specific provisions of Banking Companies Act as observed above the main plank of argument on the side of the Bank is that under a scheme of amalgamation, Bharat Bank has entered into the agreement with the Punjab National Bank whereby the assets and liabilities have been transferred to the Punjab National Bank and that they have ceased to receive any more deposits and other banking business and are only dealing with the realisation of debts. In support of the only evidence brought on the record was a copy of the argument which purports to have been made at Delhi on 10th March 1951 between Bharat Bank as "Transferor" of the one part and Punjab National Bank as "Transferee" of the other part. This document furthermore purports to have been signed by the Chairman of Bharat Bank as well as the Chairman and General Manager of Punjab National Bank and attested by three witnesses. There is nothing on the record to show that the matter has gone to the Court for approval or any intimation has been given to the Registrar of the Joint Stock Company, in this respect. The subject matter mainly deals with the arrangement henceforward to come into effect in regard to the payment of the monies to the depositor or the creditors of Bharat Bank. It was asserted by Shri Rastogi that the scheme of amalgamation was approved by the shareholders by a joint meeting but no such resolution was brought on the record. In face of the denial by the other side the two allegations run counter to each other and hardly furnish a good data for the purpose of evidence and on this meagre material even the provisions of Banking Companies Act of 1949 cannot be said to have been satisfied. The question of amalgamation has been embodied under Sec. 45 of the Banking Companies Act and reads as follows:

Sec. 45: "Notwithstanding anything contained in any law for the time being in

- (a) no Court shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, unless the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of the depositors of such company, and
- (b) no banking company shall enter into any agreement or arrangement for, or be a party to, any scheme for the amalgamation of such company with any other banking Company without the previous sanction in writing of the Reserve Bank."

It may be pointed out that reference was made in the arguments that the amalgamation was made with the sanction of the Reserve Bank. It may be so, but there is nothing on the record to show further as to what steps have been taken by the Reserve Bank or by the Transferor and Transferee Banks in pursuance of this in regard to the suspension of business for which a certain procedure has been laid down under Section 153-A of the Companies Act in order to safeguard the interest of those who dissent from the compromise or arrangement and to secure that restriction that amalgamation shall be followed and effectively carried out. The meaning of the word 'amalgamation' under Sub-section 1 of Section 153-A of Companies Act although has no definite legal meaning and it does contemplate a state of things under which two Companies are so joined as to form a third entity or one Company, is absorbed into and blended with another Company but no such thing can be gathered from the contents of the agreement. Shri Rastogi in the course of argument neither stated that a third entity has been established or the two Banks have absorbed into and blended completely. This Bank as urged by the Union side is still functioning in its limited way and has not been removed from the list of Scheduled Banks under any notification of the Government until now. The Bank management is still being treated as a separate entity so far

disputes between the employees and the employers are concerned in the Industrial Disputes Act and the Bank representative failed to give any cogent reply to the fact asserted by the Union side that only recently the Bank representatives were called upon to appear before the Conciliation Board and Bharat Bank was treated as one of the Scheduled Banks in the list published in that connection giving points referred to the Conciliation Board. The word 'amalgamation' even in its normal dictionary meaning does not involve the formation of a new Company to carry on the business of an old Company or should exist as a separate entity after the amalgamation. To my mind it connotes complete absorption if amalgamation is to be given effect to. I am afraid I may not be transgressing the limit of discussion so far these cases are concerned and without hazarding my opinion in regard to the amalgamation it is sufficient for the purpose of resolving the contention raised that on the material brought on the record, I am not satisfied that the claims made by the employees of Bharat Bank are not triable by this Tribunal on the execution of the agreement referred to above. There is yet another aspect of the question *viz.*, that the claims before me relate to a contract of personal service and I am of the considered opinion that such contract of personal services cannot legally be transferred without the consent of the other party or by the termination of service by notice or by entering into a new contract with the Transferee. There is no dearth of authority English as well as Indian that right to service is not property which can be transferred by the employer of his own accord or should be terminated without proper notice or mutual consent. Section 153-A of the Indian Companies Act deals with the provisions for facilitating arrangement and compromises and naturally when the matter comes before the Court either by the orders sanctioning the compromise or arrangement provisions, for all such incidental, consequential and supplemental matters as arise out of that arrangement, shall have to be secured as well. The contract of service has also been dealt with under the Indian Contract Act and in innumerable circumstances may justify the dismissal of an employee but not on the score of unprofitable nature of the Master's business 1938 Madras 672 (A.I.R.) is an authority in point wherein it was held that an employer cannot put an end to the employment because he finds his business not profitable or that he could get somebody else at a smaller salary and some notice must be issued before discharge takes place whereby the question of unemployment relief be determined. In another Madras authority *viz.*, AIR 1941—Madras—page 788 it was also held that dispensing with services on account of financial stringency, the action was justified only on payment of retrenchment relief or some damages for the breach of the contract. 1934—Privy Council—page 60 may also be read with advantage on the subject. At any event all claims before me for adjudication under this Reference are not of one nature and while dealing with the cases of discharged employees who want reinstatement, in case, the discharge order be found unjustifiable, the question of retrenchment relief shall have to be considered on its merits. This relief may well also form a part of the debt or arrears or any other monetary compensation and the same cannot be taken off from the jurisdiction of this Tribunal when Bharat Bank is still working. For all these reasons I do not find any force in the preliminary objection raised by the Bank representative and the same is over-ruled with the result that the claims preferred by the employees of Bharat Bank shall be discussed on merits under the usual procedure followed in the hearing of Bank disputes which have emanated from various States under this Bank reference No. LR.2(273), dated 21st February 1950. This brings me to the first case under Bharat Bank namely that of Shri R. N. Garg, the one on the anvil when this legal objection was taken.

(1) *R. N. Garg.*—He joined the Bank's service in 1945 and was doing his work satisfactorily at Gonda; when his services were retrenched without assigning any reason or having obtained the permission of the Tribunal under Section 33. It was maintained that the order of discharge was bad in law for want of permission. Shri Rastogi on merits while admitting the facts substantially submitted that the applicant had become surplus to the requirements because the Branch at Gonda which proved an uneconomical Unit was closed on 29th April 1950. He was, however, paid one month's salary in lieu of notice and his claim was not tenable. Reliance was placed on the decision given in Rampur Engineering Company Vs. Sri Solomon (published in Labour Law Journal—February 1951) wherein it was held that the acceptance of notice pay by Shri Solomon having been made under compulsion does not debar him from bringing the claim before the Board by way of industrial dispute. In this case the record reveals that one month's salary in lieu of notice was offered to Shri Garg but he refused to accept the same as evidenced from Exhibit 1 brought on the record by the Bank. The authority relied upon by Shri Rastogi, therefore, is pointless and this claim must succeed.

But in the case of Bharat Bank, whose management has closed several branches of uneconomical units it has been held in previous cases that the relief by way of reinstatement would not be possible and only retrenchment relief was allowed. I would, therefore, direct the Bank to pay half month's salary with allowances for each completed year of service to Shri Garg within one month from the date when the award becomes operative.

(2) *Closure of Printing and Stationery Department of the Bank.*—This application was preferred by Shri K. D. Dwivedi Vice President, U.P. Bank Employees Union, Allahabad, and it relates to the closure of Bharat Bank's Printing and Stationery Department at Allahabad, which resulted in the retrenchment of 15 employees. It was alleged that the action of the Bank was arbitrary and the distress of the employees was the result of the whimsical policy of the Bank authorities. Prayer was to ask the Bank not to close the branch and to withdraw the notice served on the employees.

The Bank representative, in reply submitted that the Bank had the Printing and Stationery Department which used to publish all printed matters of the Bank but in April 1950, the Bank took stock of the situation and found that they had closed on less than half of the offices and the maintenance of printing and stationery department had become unnecessary and the same was closed. The employees accordingly were paid one month's notice under rules and they accepted it. It was maintained that by their acceptance the claim was not tenable.

On the appreciation of the facts I find that the position taken up by the Bank is not devoid of force because half of the number of their offices after the partition of the country was eliminated by the closure of the Branches and the maintenance of the Printing and Stationery Department at Allahabad in addition to the Stationery Department at the Head Office could not be carried on merely for the maintenance of the employees. The next question is as to whether the employees could have been absorbed in some other department and if not were they entitled to any retrenchment relief by way of compensation. Now their services came to lose to no fault of theirs and they are entitled to some compensation by way of retrenchment relief but the difficulty is that the Union did not care to give the names of the employees much less the particulars regarding their service. In the absence of any material on the record it cannot be known as to whether the employees satisfy the definition of workman and they were working on permanent basis, and what was the length of their service. I am, therefore, constrained to disallow the claim.

(3) *Prem Kishore Sharma.*—His case is that he was working as Godownkeeper but was discharged without obtaining the sanction of the Tribunal under Section 3. It was urged that the employer was not competent to dismiss or discharge any of the employees without permission. The relief sought was for reinstatement.

The Bank's reply to the application was that Shri Sharma was attached to Hurja as godown-keeper. Following the closure of this office on 29th April 1950 the entire staff attached to this office became surplus to the requirements of the Bank and had to be retrenched. Shri Sharma was, therefore, relieved from Bank's services against payment of one month's pay under rules and that there was no infringement of Section 33 of the Act as in the case of retrenchment prior permission was not required. It was maintained that permission was required only if punishment was to be given connected with the dispute and in the case of bare retrenchment, such permission was not necessary within the purview of Section 33.

It was further emphasised that the services of the applicant came to close on the closure of the office when the entire staff attached to that branch was retrenched; and as such the termination of his services was not a matter of any discrimination and it would be too much to say that the employer was out to close his own business in order to terminate the services of the applicant.

The main question which falls for consideration is as to whether the order was ad in law for want of necessary permission within the purview of Section 33. The point taken up by the Bank representative as said above is that permission was required only if the punishment was to be given and the cases of retrenchment cannot be dubbed as cases of punishment, under the old Act of 1947. Now the position of law is quite clear under the amended Act of 1950 as already held in the application of one Haider Ali Maher Ali of Bombay under Section 33-A Ministry of Labour Notification No. 90(108) dated 16-3-51) that the change in the amended Act has withdrawn the power altogether from the employer during dispute pending before the Tribunal and has made it obligatory upon the employer to obtain an express permission before any workman on any ground

whatsoever is discharged from service. But this case is governed under the old Act and the point accordingly requires further clarification. In this respect I am reminded of the finding given by this Tribunal in a case of N. K. Dalal (National Savings Bank) emanating from Bombay State (published in the Gazette of India dated 24th March 1951). In that case Shri Talak, the learned Counsel for the Bank raised a similar contention that permission under Section 33 was not necessary in cases of retrenchment but did not refer to any legal precedent and reliance was placed only on a copy of order passed by their lordships of the All India Industrial Tribunal (Bank Disputes) in the matter of an application under Section 33 made by the National Savings Bank Ltd. This reference rather negatived the contention because permission actually was sought for by the Bank from the said Tribunal. This time again Shri Rastogi did not refer me to any legal precedent in support of the contention and I have no mind to arrive at an conflicting decision already given in the aforesaid case of Shri N. K. Dalal. The exception in Section 33 moreover to my mind was made only under the Act of 1947 for misconduct connected with the dispute which too has now been deleted in the amended Act. Now under the old Act if 'retrenchment' was to be taken out from the ambit of causes of 'discharge' which word is very comprehensive exception should have been made as it was made in the case of misconduct. The word 'dismissal' furthermore connotes a decision given after charge and enquiry but the word 'discharge' in *contra* distinction to the word 'dismissal' is much more comprehensive and would cover all sort of cases of the termination of service. The use of a 'comma' after the word 'discharge' and the word 'dismiss' followed by the word 'or' presumably has connection with 'otherwise punish' and as such it appears to me that discharge from service by way of retrenchment cannot be confused with reference to the words 'otherwise punish', in the Section. The change in the words in the amended Act also leads to this conclusion and I am therefore, of the opinion that even under the old Act no exception was made in the case of retrenchment and the discharge of workmen without permission or the ground of retrenchment was not warranted by the statutory provisions of Section 33. I am conscious that in the present state of industrial organization unforeseen depression sometime calls for adjustment of Labour force according to the exigencies of business and promotion on economic ground which may create some difficulty but when all these contingencies have been duly considered in the amended Act, it cannot be argued with any justification that there was an exception made in the case of retrenchment under the old Act. The one exception as already stated above was made in the case of 'misconduct' which postulates the element of punishment. The word 'retrenchment' came in for discussion before the Labour Appellate Tribunal in the case of A.B. Patrika published in the Labour Law Journal, April 1951 page 373 and it was observed that the word 'discharge' used in Section 22(b) along with its collection with the phrase 'whether by dismissal or otherwise' indicates that it has been given a very wide import so as to comprise within it any kind of termination of employment unrelated to punishment, including "retrenchment" in its primary sense on economic or other such legitimate grounds. I am accordingly fortified in the observations given above that the termination of service by way of retrenchment falls within the ambit of Section 33.

For all these reasons the legal objection fails but as already held in several cases of Bharat Bank I do not think any useful purpose will be served by calling upon the Bank to take back the employee in service for want of permission at the same relief which has been awarded in several other cases viz., compensation would suffice. In the result the Bank is directed to pay half month's salary for each completed year of service with allowances admissible within one month from the date when the award becomes operative.

(4) *Ram Saran Das Agrawal*.—His grievance also is that his services were retrenched without obtaining the necessary permission under Section 33 and that order of discharge was bad in law. He wants reinstatement. The Bank's reply was that Shri Agrawal was also attached to Khurja Branch and following the closure of Khurja Branch on 29th April 1950 the entire staff attached to this office became surplus and had to be retrenched. Shri Agrawal was paid one month's salary under rules and his claim was thus not tenable and there has been a contravention of Section 33 of the Act because permission in the case of retrenchment was not necessary which did not amount to any punishment within the purview of the Section. It was also urged that it was not a case of victimization but of retrenchment on economy measure.

The point involved in this case is identical to the one already discussed above in the case of Shri Prem Kishore Sharma (3) and the same reasoning would prevail in his case with the result that the claim is allowed and the Bank is directed

to pay Shri Agrawal half month's salary with allowances admissible for each completed year of service within one month from the date when the award becomes operative.

(5) *Jinendra Das Jain*.—His case is that his services were retrenched on the closure of Etawah branch along with the whole staff. It was contended on his behalf that the Bank had given an undertaking to the All India Industrial Tribunal (Bank Disputes), Bombay, whereby they were bound not to disturb the *status quo* and to make any change in the service conditions but notwithstanding of that undertaking this Branch was closed with the result that the whole staff was retrenched including the applicant. It was maintained that the order of discharge was bad for want of permission under Section 33. The Bank's reply was that Etawah branch had become an uneconomical unit and was closed owing to the shrinkage of work as a measure of economy. The services of the whole staff were retrenched and no discrimination was made in the case of this applicant and as such it was wrong to call this case as an act of victimization. On the point of permission it was submitted that in the first place the undertaking referred to above was withdrawn on the 6th March 1950 and furthermore permission was not required in the case of retrenchment. The same arguments were reiterated which were advanced in the previous case decided above *viz.*, the case of Shri Premkishore Sharma (at No. 3). The facts of the case are also identical with that of Shri Sharma and the same reasoning prevails in this case with the result that the applicant is entitled to retrenchment relief and the Bank is directed to pay him half month's salary for each completed year of service plus allowances admissible within one month from the date when the award becomes effective.

(6) *Narendra Nath Chaturvedi*.—His grievance also relates to the closure of Etawah branch. In point of fact he was also one of the members of the staff of Etawah branch which was closed as an uneconomical unit. It would serve no useful purpose to encumber this award by repeating the same facts and arguments advanced by both sides. He is accordingly held entitled to the retrenchment relief which is granted with the direction to the Bank to pay him half month's salary with allowances admissible for each completed year of service within one month from the date when the award comes into operation.

(7) *Kailash Chandra Jain*.—The case of the applicant put briefly is that he was working as a Head Cashier at Secunderabad office which office was closed on the 15th December 1949. The two other cashiers who came under retrenchment were subsequently absorbed but the services of this employee, who was senior to both were terminated on account of some ulterior motive. The dates of appointment of the three employees were given in the application and reference was pointedly made to that.

Shri Rastogi in reply submitted that it was not correct to say that there were three cashiers in Secunderabad office. In point of fact Shri Kailash Chandra Jain was the only Cashier and that Shri Chandra Mital and Gulshan Lai were not working at Secunderabad and the application of the principle of 'last come first go' did not arise. On merits it was submitted that his services were terminated on the closure of the Branch, and it was argued that the retrenchment was not made for the purpose of victimization but as a measure of economy and that in the case of retrenchment permission under Section 33 was not required. The Union representative in reply admitted the fact that the discharge of the employee was occasioned on the closure of Secunderabad branch and on these premises the same reasoning and arguments which have been discussed in the case of Sharma and others would apply in this case also. In the result the Bank is directed to pay him half month's salary plus allowances for each completed year of service within one month when the award becomes operative.

(8) *Basdeo, Peon*.—This employee was working as Peon at Jhansi branch and was ordered to join at Aligarh on transfer. It was contended that he was a low paid employee and usually these employees are not transferred from one place to the other. It was stressed that the transfer to a distinct place amounted to the change of conditions in service under Section 33 to the prejudice of the employees. The relief sought was for the re-transfer from Aligarh to Jhansi. It is also stated that he has suffered by this transfer by the stoppage of house allowance of Rs. 5 and the same be restored.

Shri Rastogi in reply opposed the application and contended that the cases of transfer do not fall within the purview of the Reference as specified in the schedule attached and as such the case was not triable by this Tribunal. On merits it was submitted that the staff of Jhansi branch was curtailed and out of the two Chaprassis one was to be sent to the other place. The transfer was

accordingly effected owing to the exigencies of administration and not *mala fide*. Reliance was placed on bye-laws of the Bank (Clause 15) whereby the Bank was within its right to transfer any employee from one place to the other within the same area. Replying to the payment of allowance, it was submitted that the same was a local one and on transfer it could not be continued.

This is a case of transfer and the relief sought was for re-transfer to the previous place of duty. The transfer was made in the same State of U. P. and this question has been fully thrashed out in previous cases and in the light of the decision already arrived at this case does not call for any interference. The same is disallowed.

(9) *Krishna Gopal Tandon*.—The facts put briefly are these. This employee was working at Lucknow and was transferred to Sitapur which was closed some time after with the result that his services were terminated. It was contended that he was an old employee and he should have been absorbed somewhere. The management, however, did not care to look into the cases of the old employees and terminated the services of the whole staff without applying the principle of seniority. It was urged that the retrenchment of the whole staff on the closure of a certain branch was a case of gross miscarriage of justice because the whole staff were shunted off unceremoniously without trying to absorb them somewhere. The provisions of Section 33 were also not applied and as such the order of discharge was bad in law. On merits Shri Rastogi admitted the facts substantially and stated the closure was made on economic basis and the whole staff without any distinction was retrenched and hence there can be no victimization of any one employee. Replying to the argument of the other side that the employee could be absorbed as he was a senior man, it was submitted that the Bank had no absorbing capacity and it was not possible for the Bank to do so.

The ultimate analysis of the facts of this case also brings me to the same point as to whether permission was necessary in the case of retrenchment which had already been discussed in other cases. In the light of the finding that permission was necessary, the order of discharge was bad in law but in view of the exigencies of the situation of the closure of several branches on account of shrinkage of business in Bharat Bank, in this case also reinstatement is not called for and the applicant will be held entitled to retrenchment relief at the rate of half month's salary plus allowances admissible for each completed year of service. The bank is directed to pay him this amount of compensation as retrenchment relief within one month from the date when the award becomes operative.

(10) *Madan Mohan, Peon*.—His grievance is that he was working as a Peon and happened to be an active member of the Union. The Bank did not like his activities and the matter was referred to the Labour Commissioner. Subsequently when his increment fell due, the same was stopped unjustifiable on account of his Trade Union activities. It was maintained that his was a case of victimization and the increment be released. It was also stated that the Peon has since been discharged.

Shri Rastogi repudiated the argument of the other side and stated that it was altogether wrong to say that his increment was withheld on account of his Trade Union activities. The Bank in point of fact was not aware that he was a member of the Union. While at Navaganj (Kanpur) it was found that he was not behaving properly and was creating troubles whereupon he was transferred to Fatehpur. At Fatehpur also he did not improve and actually picked up quarrel with the Clerk-in-charge and gave a slap to him. The matter was reported to the Manager, Navaganj office who reported the matter to the head office for withholding his increment. The same was stopped on reasons of discipline.

On the appraisement of the facts I do not find any good reason to interfere in the matter of stoppage of increment. The claim is accordingly disallowed.

(11) *Raja Ram Gupta*.—The claim was not pressed and the same is deemed to have been withdrawn.

(12) *Jinendra Kumar Jain*.—He joined the Bank's service as Godown-keeper at Moradabad in 1943 and was transferred to Dhampur in 1944. His services, however, were terminated in 1946 without assigning any good reason. The new guarantee broker appointed him as his nominee on 9th December 1946 but the Bank management on account of previous prejudice against him terminated his services second time in December 1946. He, however, approached the employer once again and was allowed to continue but was discharged third time on the 24th February 1950 on the resignation of the guarantee broker, notwithstanding of the undertaking given by the Bank to the All India Industrial Tribunal (Bank

Disputes). Bombay, for maintaining *status quo*. Provisions of Section 33 were also ignored and violated. It was contended that the change of treasurer does not affect the continuation of the services of Cash Department as held in the Conciliation Board award and by the All Industrial Tribunal (Bank Disputes) also. The relief sought was for reinstatement with retrospective effect from 24th February 1950 and payment of salary and allowances for the intervening period as well as the grant of leave and other benefits.

The Bank representative in reply submitted that the system of guarantee brokership was discontinued by the Bharat Bank on the decision of the Reserve Bank of India as that payment of commission was held against the provisions of Banking Companies Act. Reference was made to the case of Shri Ram Swarup Gupta (Debi Bank Disputes award of this Tribunal)—Published in the Gazette of India, dated 30th December 1950 (pages 1147-48).

Now the termination of his services was the outcome of the discontinuance of the whole system of guaranteed treasurership by Bharat Bank on the decision of the Reserve Bank of India and this fact would entitle him to retrenchment of his services on the discontinuance of a certain system. He could, however, be absorbed in some other section on the principle that he was a Bank employee but Shri Rastogi submitted that the head office could not accept his services in the clerical cadre although he was recommended by the Manager, Dhampur. In regard to the absorption of the applicant in the clerical cadre the question is rather problematical but in the light of the prevailing state of affairs in the Bharat Bank explained above, I do not think that the order of reinstatement would be of no use. Accordingly he too will be entitled to the retrenchment relief at the rate of half month's salary for each completed year of service with allowances admissible and the Bank is directed to pay the amount within one month from the date when this award comes into force.

(13) *Closure of Etawah Branch.*—The case of the Union regarding the closure of Etawah Branch is that Bharat Bank had given an undertaking to the All India Industrial Tribunal (Bank Disputes) to maintain the *status quo* and not to make any change in the conditions of service of the employees. The Bank, however, did not respect the undertaking and closed certain branches including Etawah and thereby attracted the penalties of Section 23 of the Act inasmuch as their action amounted to a lockout as defined under the Act by dispensing with the services of a large number of employees *en masse*. Reference was made to Calcutta Gazette, dated 28th July 1949 (pages 1267-1289) in the matter of Sun Rolling Mills and their workmen wherein it was held that the discharge of no less than 27 persons amounted to a lockout. Reference was also made to the West Bengal award wherein certain observations were made regarding the closure of branches. On the strength of these dictums, it was urged that the provisions of Section 33 were violated and the Bank was liable for the penalty. It was also emphasised that the Interim award was also in force in those days and the lockout by the Bank of this branch was an aggrieved form of the infringement of the provisions of Section 23. The next argument advanced in this connection was that under the Conciliation Board award of Uttar Pradesh it was obligatory upon the Bank to obtain prior permission before the closure of any branch. It was urged that all the legal precedents were disregarded by the Bank in treating with the closure of these branches including this branch *viz.* Etawah with the result that the interest of the workmen have been seriously jeopardised. In regard to the contention raised in the written statement that certain branch had become uneconomic unit, it was argued that the Bank was working as a whole and some of the branches were investing branches and some were concerned with the deposit. If some proved losing concerns the administration should be taken as a whole and thus the plea of uneconomic unit is not tenable.

Shri Rastogi in reply submitted that Bharat Bank started in 1942 and the policy of expansion of branches all over India was dictated by the availability of business in those days. But on the cessation of the hostilities it so happened that the branches proved to be uneconomical units and the Bank had to review their position. Ultimately under the advice of the Reserve Bank of India the management decided to close the uneconomical units. In pursuance of this policy the Bank closed about 123 branches including Etawah and Mussoorie. This decision was arrived at in view of the fact that the working figures and the net profit of the Bank fell down from 33 crores to 16 crores and profits came down from 26 lacs to 2 lacs. On facts it was submitted that Etawah branch was being run at a loss since its inception and at the time of the closure it showed a loss of Rs. 11,000 annually. The Bank could not run on further and had to close. In annexure 37 the Bank gave the list of employees of the branch and the same was filed for the purpose of Reference. It was argued that the Employees Union had not

filed any list and prayed for reinstatement. Regarding the absorption of the retrenched employees in other branches of the Bank it was contended that the Bank had no absorbing capacity at all and hence the question does not arise.

In regard to the closure of Etawah Branch, the policy regarding the closure of branches disclosed in this case amply justify the view taken up by me in disposing all the cases of retrenchment. The assertion made by the Bank representative that no less than 123 branches including Etawah branch has since been closed was not denied and this one fact would show that it was futile to urge for the reinstatement of the employees for the simple reason that the capacity for absorption must have been exhausted by this time and the order of reinstatement even in justifiable cases was likely to be nullified. The cases as claimed by the Union are more to be decided on natural justice than the technicalities of law by the Industrial Tribunals and as such the prayer for reinstatement if justified in law would be infructuous in effect. Accordingly the only relief which can be awarded is one of compensation and the same has been considered and invariably allowed in which claim has been made. This application deals in general with the closure of Etawah branch and in the light of the admitted facts, it is idle to argue that the Bank should be called upon to reopen the branch or to take back the discharged employees into the services. The U. P. Bank Employees Union in the statement of claim, dated 4th April 1950 has stated as under:

"We enclose herewith a list of the above cases in duplicate for your information and necessary action.

The petitions of individuals will be submitted in due course. Owing to the proceedings of the All India Industrial Tribunal at Bombay, we regret, we could not submit the list earlier. The list is not exhaustive."

The list attached with this representation gives the names of some of the employees and the name of the branch as well as the nature of the cases. The employees mentioned therein are not the employees of Etawah branch and their applications must have been disposed of on their individual claims filed by them or by the Union on their behalf but so far the closure of Etawah branch is concerned the names were not mentioned much less the particulars. I am, therefore, unable to allow the retrenchment relief (which is otherwise granted) in the absence of the particulars which are always necessary to determine, the designation, the length of service and the nature of service of each employee. In the result the application stands dismissed.

(14) *Closure of Mussoorie Branch.*—The representative of the Bank as well as the Union stated that the arguments in the case of Etawah branch would apply in this case. Naturally the finding arrived at in the Etawah branch case also would form the basis of award with the result that the application stands dismissed.

(15) *R. D. Sharma.*—The case of this employee briefly is 'hat he was working as Godown-keeper as a nominee of the Guarantee-broker and after the termination of the guarantee-broker's service he was asked by the Head Office to execute certain documents. The management however without awaiting for the reply meantime discharged him from services on 21st November 1949. Prior permission under Section 33 was also not obtained. It was contended that this was a case of victimization and reinstatement was sought for with retrospective effect and grant of allowances and salary for the intervening period.

Shri Rastogi in reply submitted that he was the nominee of the Guarantee Broker and as the guarantee broker resigned, his services were terminated *ipso facto*.

The position taken up by the Bank representative is obviously untenable in the light of the finding already given that the employees of the Cash Department are as good employees of the Bank as others and their services could not be terminated treating them as the nominees of the Guarantee Broker. His case technically succeeds for the purpose of reinstatement but for the reason that Bharat Bank's capacity to take back the discharged employees appears to me to have already exhausted. I would allow him the compensation at the rate of half month's salary with allowances for each completed year of service. The Bank is accordingly directed to pay him the calculated amount within one month from the date when the award becomes operative.

(16) *Loyak Ram Mittal.*—The case was not pressed and the same is deemed to have been withdrawn.

(17) *Devi Prasad*.—This employee was working as Jemadar and was demoted to the post of Chowkidar. It was urged on his behalf that the change was a violation of the provisions of Section 33. It was further stated that his case was pending before the Regional Labour Commissioner that his services were terminated. Report of the Regional Labour Commissioner (Ex. A) was relied upon in this connection and pointed attention was drawn to the last paragraph of the report and it was maintained that in the opinion of the Regional Labour Commissioner it was a clear case of demotion. It was further argued that the Bank not only defied the advice of the Regional Labour Commissioner conveyed to them by Exhibit A but discharged the employee from service on 29th April 1950. It was urged that from whatever standpoint it may be considered the action of the management was bad in law and arbitrary.

The Bank representative in reply submitted that there were two Peons and two Chowkidars working at Khurja. The Branch Manager made a report that one Peon and three Chowkidars would be able to carry on with the work and in pursuance of this report Devi Prasad, Peon, was given the option either to remain as Chowkidar or to go to some other branch as evidenced from his own letter. It was next argued that no reduction was made in his salary and as such it was not a case of demotion or change in the conditions of service. In regard to the instructions of Regional Labour Commissioner it was argued that the instructions embodied in Ex. A amounts to an advice only and not an order. The operative part of the RLC's letter dated 16th January 1950 (Ex. A) reads as follows

"In this respect I am to point out that it is a clear violation of the spirit of the Award to change the designation of peon to chowkidar and thus an employee to work overtime, without extra payment.

You are therefore advised to please issue instructions to the branch concerned to refrain from changing the designation of the employees and thus extracting extra duties therefrom and also not to adopt such a course which may result in embittering relations between the employees and employers which would also prove prejudicial to the interest of the Bank."

* * * *

The above directions issued by the Regional Labour Commissioner be-speak itself and do not support the stand taken up by the Bank representative. In point of fact the Regional Labour Commissioner definitely came to the conclusion that the change in the designation of Devi Prasad amounted to infringement of the provisions of law. In the light of these facts and circumstances the management was not justified to by-pass the direction given by the Regional Labour Commissioner. This is correct that no charge occasioned in the emoluments but the change in status as well as in duties more especially the number of hours which were increased amount to change in the conditions of service and as such the case of Devi Prasad can be construed as one of demotion. The Bank authorities on the top of it discharged him from service some months after. In this connection the Bank representative pleaded that the termination of his service was due to the closure of Khurja branch. Under these circumstances the question of demotion goes to the background and the case shall have to be treated as one of retrenchment with the result that the application shall get the retrenchment relief at the rate of half month's salary for each completed year of service with allowances admissible as given in the case of others. The above direction will be carried out by the Bank within one month from the date of the publication of the award.

(18) *Sain Ditta Mal*.—The grievance of the applicant put briefly is that he joined the Bank's service in 1943 and worked at the risk of his life during the days of partition of the country. His services, however, were terminated suddenly without assigning any reason. The Union representative however supplemented the pleadings by alleging that the management wanted to substitute one of their relatives or in whom they were interested and this employee was victimized. Relief sought is for reinstatement and for the payment of arrears etc. for the intervening period.Replying to the contention raised in the written statement of the Bank that the subject did not satisfy the definition of workman and was an officer, the Union representative admitted that the subject was an officer having been a Manager but it was contended that as the case has been taken up by the Union, it amounted to an 'industrial dispute' under Section 2(k) of the Act and as such is triable by this Tribunal.

Shri Rastogi in reply submitted that the employee in question joined as Manager and was working as a Manager until his services were terminated and therefore he does not satisfy the definition of workman as held by this Tribunal in the Delhi Bank disputes award. On merits it was stated that Shri Sain Ditta Mal was at Muzaffarpur at the time

of partition when a forged draft was prepared in Muzaffarpur branch without actually receiving the money and thus was due to the lack of supervision and gross negligence and carelessness of the Manager. The Bank was accordingly put to loss to an amount of Rs. 10,000. Departmental enquiry was made and the matter was also reported to the police and it was found that the Draft could not have been prepared if the Manager had exercised caution and supervision over the matter.

In the light of the finding given in the Delhi Bank dispute award by me that the Manager was an officer and does not satisfy the definition of workman the claim is disallowed on this short ground without going into the facts of the case.

(19) *Kailash Chand Jain*.—This claim was filed through the U.P. Bank Employees Union but no particulars regarding this employee were given in the application. The representations of the Bank however disclosed the facts that the applicant joined the Bank's service at Secunderabad Pay Office as Cashier on the guarantee of the Treasurer but it so happened that the management had to close down the said pay office which became an uneconomical unit on the advice of the Reserve Bank of India and the services of this employee ended *ipso facto*. The Union representative thereupon controverted the argument and maintained that the employees of the Cash Department have been held as Bank employees and the management could not repudiate the claim on the plea that he was the nominee of the Treasurer. In the light of the above finding given above this claim must also succeed. The demand for reinstatement for the reasons already mentioned in other cases of Bharat Bank cannot be allowed and the Bank is directed to pay Shri Jain half month's salary with all allowances admissible for each completed year of service by way of retrenchment relief within one month from the date when the award becomes operative.

(20) *Bal Krishna Das*.—The facts of this case are almost identical with one of Shri Kailash Chand Jain (at No. 19). This employee was also working in the Cash Department and was discharged on the resignation of the Treasurer. I would accordingly award the retrenchment relief at the rate of half month's salary with all allowances for each completed year of service in his case also and the Bank is directed to carry out the direction in a month's time when the award becomes operative.

(21) *Har Gopal Tandon*.—Both sides stated that the case of Shri Tandon is similar to that of Shri Kailash Chand Jain (at No. 19) and Shri Bal Krishna Das (at No. 20) and the same arguments be read out in his case. It would serve no useful purpose to repeat the same matter once again and the finding in this case would also be the same viz. that the Bank is directed to pay half month's salary for each completed year of service with allowances within one month from the date when the award becomes operative.

(22) *Birbal Prasad: Rajbanshi*.—This is a case of transfer and the same was not pressed so far the relief of transfer is concerned. The same shall be deemed to have been withdrawn.

(23) *Ravi Dutt Kuchhal*.—This employee was working at Muzaffarnagar Pay Office when he was informed by the Manager by a letter No. 1515, dated 26th April 1949 that he was transferred to Meerut. It was contended on his behalf that the employee was not consulted and it was a punishment to him.

Shri Rastogi on behalf of the Bank submitted that Shri Kuchhal was not co-operating with the Officer-in-charge of the Pay Office and was creating all sort of obstacles in his way and to meet the exigencies of the situation the management had to transfer him to Meerut. It was also objected that item of transfer does not fall within the scope of the Reference having not been mentioned in the Schedule. The position taken up by the Bank's side in law and fact prevails with the result that the claim is dismissed.

(24) *Shankar Dayal Tandon*.—His case was not pressed by the Union representative and the same stands withdrawn.

(25) *Stoppage of Increment in all U.P. Branches*.—The Bank representative at the outset stated that the increment has been released and the relief stands satisfied. Shri Kakkar however joined issue and contended that the release was not made in good faith and it was done so in order to sack all the employees of the Union. The hard fact remains that the increments have been released and the question of good or bad faith hardly is of any consequence. In the result the application stands dismissed.

(26) *Madan Mohan Trivedi and (27) Sant Kumar Tewari.*—This is a joint petition and relates to their transfer from Kanpur to Meerut. The Union representative contended that the employees being Peons should not have been transferred normally as their resources are meagre and subordinate staff of their type should not be transferred. It was further stated that other persons were imported in their place immediately after their transfer which indicates that they were removed from Kanpur with an ulterior motive. It was argued that the transfer was actuated by bad labour practice as the Peons happened to be the active members of the Union. Reference was made to the RLC's letter, dated 9th June 1950 (Ex. A). It was further submitted that both these employees have since been discharged on the plea that they did not join Meerut office and they have vacated their post.

Shri Rastogi in reply categorically denied the allegation that new men were imported in place of these two men in Kanpur and further maintained that their transfer to Meerut was made owing to the exigencies of administration. The transfer furthermore was within the same state and area and was not actuated by any bad labour practice. The matter was referred to the RLC and his advice was conveyed by a letter (Ex. 1) to the effect that when they do not join within a specified period their services may be terminated. The Bank according to that advice waited for $3\frac{1}{2}$ months and furthermore gave one week's time as evidenced from (Ex. 2 and 3) letters and on their failure to join ultimately terminated their services on the plea of having vacated their post.

The operative part of the Deputy Labour Commissioner's letter dated 28th March 1949 (Ex. 1) furnishes the answer to the claim and may well be reproduced as under:

"What you can do in such cases is that while passing transfer orders you can add that in case the employee concerned does not join his employment within a specified time his services will be terminated. In such cases you can take necessary action in anticipation of our formal permission to discharge the services."

The matter is accordingly covered by permission of RLC and need hardly be further probed with the result that the application stands dismissed.

(28) *Jai Ballabh Joshi.*—He joined the Bank's service in 1945 and was working as a Clerk-in-charge at the time of the termination of his services in December 1949. He wants reinstatement.

Shri Rastogi on behalf of the Bank submitted that the services of this employee were terminated on the closure of Sambhal Pay Office on payment of one month's salary under rules of the Bank which he accepted and the question of reinstatement does not arise. The Union representative however contended that the order of discharge was bad for want of permission of the Tribunal under Section 33. The point has been discussed once and again in previous cases and need not be pursued further. The applicant will get the usual retrenchment relief at the rate of half month's salary for each completed year of service with allowances admissible and the Bank is directed to carry out the said order within a month's time from the date of the publication of the award.

(29) *Dharan Pal.*—He was a Cashier at Sambhal Pay Office which was closed with the result that his services came to an end. It was contended on his behalf that although he was a nominee of the Treasurer yet he was an employee of the Bank and his services could not be terminated without obtaining the prior permission of the Tribunal under Section 33. The usual arguments were advanced on behalf of the Bank by Shri Rastogi which need not be repeated. It is a case of retrenchment and the usual relief of compensation is the only remedy in the cases of Bharat Bank. The Bank is accordingly directed to pay the applicant half month's salary for each completed year of service with allowances admissible within one month from the date when the award becomes operative.

(30) *Raghbir Dayal.*—He too was a Cashier working at Mussoorie branch when his services came to close on the 9th February 1950 on the closure of the Mussoorie Branch. The position taken up by both sides was the same as described above and the result would also be the same viz. that the employee will get compensation at the rate of half month's salary for each completed year of service with allowances admissible and the direction is to be carried on within a month's time on the operation of the award.

(31) *Lok Nath, Peon.*—Both sides stated that the facts are identical with that of Shri Devi Prosad (at No. 17). Shri Rastogi further added that this Peon was found rude in his behaviour and the matter was referred to the Conciliation

Officer who by his letter dated 24th March 1950 (Ex. 1) advised the Bank management to transfer the Peon.

Now the letter of the Conciliation Officer (Central) addressed to Shri Lok Nath (Ex. 1) clinches the matter inasmuch as the transfer was made on his advice and the applicant was directed to be rest contented with his present lot as he had refused to go outside Agra. In the result the application fails and is dismissed.

(32) *Madho Singh, Peon*.—The facts of this case put briefly are that he was an active member of the Union. It so happened that he had to go on privilege leave from 7th to 27th June 1949 and during that period he suddenly fell ill and furthermore his child also died and he was unavoidably detained. He submitted his leave application duly supported by Medical Certificate to Branch Manager, Bareilly, but no reply was forthcoming. When he reported for duty the Manager asked him to go to Head Office. He accordingly went to Delhi and contacted with the management and was instructed to report for duty at Bareilly branch. The local Manager however did not allow him to join his duty on account of his Trade Union activities. It was contended that his services were terminated unjustifiably on the plea that he had vacated the post although he applied for leave and the Head Office had also instructed him to join at Bareilly branch. The next argument was that no sanction under Section 33 was obtained and as such the order was bad in law. The relief sought was for reinstatement and payment of emoluments for the intervening period. Shri Kakkar arguing on his behalf emphasised that the position taken by the Bank in the written statement (paragraph 5) would rather show that the Local Manager was not prepared to allow him to join his duty and offered to re-appoint him which he could not accept. The Union representative concluded that the management was very callous in treating this man whose son died during this leave period and he did not absent from duty deliberately.

Shri Rastogi in reply stated that it was correct that the applicant went again on leave and asked for extension more than once but it was not in the knowledge of the Bank as to whether his son died in the course of the leave period. It was further argued that his last application was not supported by Medical Certificate and under the rules, as no leave was due to his credit, it was not entertained and subsequently he did not make any effort to file any Medical certificate and as such had absented himself from duty. Finally, it was submitted that he has already been paid his Provident Fund and security and stated in his letter dated 4th April 1951 (Ex. 2) to the effect that he had no claim against the Bank.

Now Exhibit 2—a document written in vernacular be-speaks that he had received the arrears of his salary as well as the Provident Fund and had satisfied his claim if any. Shri Kakkar on behalf of the Union, however, still contended that this document must have been taken under coercion which means that even the Union representative is not sure about coercion. In the absence of any evidence of coercion or duress the admission of the applicant must have its way. In the result the petition fails and is dismissed.

(33) *Lalta Prasad Jain*.—It was argued on his behalf that this case was one of retrenchment for which permission was not obtained under Section 33. Reference was made to the case of Amrita Bazar Patrika and their workmen (published in Labour Law Journal April 1951—page 374). On the strength of this authority it was maintained that permission was absolutely necessary and the claim should succeed on this short ground. Reliance was also placed on this Tribunal's Bombay Bank disputes award in the case of Shri N. K. Dalal of National Savings Bank. On facts it was also stated that after the termination of guarantee broker's job he continued for about 4 months and as such the Bank could absorb him usefully in some other job. Lastly it was submitted that the principle of 'last come first go' was not applied in this case and he should have been absorbed somewhere else. In this respect reliance was placed on the finding given in the case of Cooper Allen & Co. Vs. its workmen, published in Labour Law Journal, August 1950.

Shri Rastogi replying to the legal contention raised by the other side that the order of discharge was bad in law for want of sanction under Section 33, referred to the case—Jain Rubber Mills and their workman (LLJ—April 1951—page 389) wherein it was held that no application under Section 33 was necessary during the pendency of litigation. On merits it was stated that Lalta Prasad was a godown-keeper and was a nominee of the guarantee broker who resigned in September 1949 but Lalta Prasad continued to serve because some investment was involved and realisations were to be made. It was also argued that the termination of his services were not due to any bad labour practice but owing to the closure of the branch which had become an uneconomical unit and was to be closed.

This case also falls under the plea of retrenchment and both sides mainly confined their arguments to the legal aspect as to whether permission under Section 33 is necessary in the case of retrenchment or not. This point has already been discussed in the case of Shri Premkishore Sharma (at No. 3) with the finding that such permission is necessary. Shri Rastogi cited the case of Jain Rubber Mills (published in Labour Law Journal—April 1951—page 389). On the perusal of that award I however find that the point which came up for discussion in that case related to the word 'workman' concerned used in Section 33 and the question of permission in retrenchment cases were not directly dealt with. The decision furthermore has been dissented by another adjudicator Shri M. C. Banerjee in the case of 'Eastern Plywood Manufacturing Co. Ltd. and their workmen' (published in LLJ—June 1951). The legal precedent cited is thus not a good authority. The decision accordingly must be arrived at in the light of the finding given in Shri Prem Kishore Sharma's case (at No. 3) with the result that the order for want of permission was bad. I am, however, not prepared to grant reinstatement for the reasons already stated in other cases viz. that Bharat Bank has no capacity to absorb and the order of reinstatement would, therefore, prove infructuous. The applicant will get the other relief given in such cases of retrenchment i.e. one of compensation and the Bank is directed to pay half month's salary for each completed year of service with allowances admissible to the applicant within one month from the date when the award becomes operative.

(34) *Amar Nath*.—His case is that he was working under the system of Treasurership as Hundi Presenter. He also happened to be an active member of the Union and his activities were not liked by the local Manager, who asked the Treasurer to withdraw his guarantee with the result that his services were terminated. It was also contended that no permission under Section 33 was obtained and the order was bad in law.

Shri Rastogi in reply submitted that it was not correct to say that the Treasurer was asked to withdraw the guarantee for him and the hard fact was that he was charged on several counts and was asked to submit his explanation as evidenced from documents placed on the record (Exhibits 1 to 5). The Treasurer made an enquiry into these charges and informed the Bank that he could no longer afford to stand guarantee for this employee as borne out by Exhibit 6. Regarding permission it was submitted that as the employee was a nominee of the Treasurer such permission was not necessary.

In the light of the finding already given that the employees of Cash Department are not only the nominees of the Treasurer but they are as good employees of the Bank as others this case attracts the provisions of Section 33 and normally, the plea of reinstatement would succeed in his case but as observed above the direction for taking him back in service is not likely to fructify in the case of Bharat Bank, I would therefore, allow the other relief viz. one of compensation at the rate of half month's salary for each completed year of service plus all allowances admissible. The Bank is directed to pay the amount to the applicant within one month from the date when the award comes into force.

(35) *Kashi Prasad*.—The subject was working as Hundi Presenter at Muzaffarnagar branch. He was transferred to City office as Assistant Cashier cum Hundi Presenter. At that time he was being paid Rs. 35 plus Rs. 16 Dearness Allowance and he asked for the implementation of B. B. Singh award in his case. The management, however, instead of giving him the benefit of the award terminated his services. The matter was referred to the Conciliation Officer and on his intervention he was taken back in the service but subsequently again he was served with one month's notice on 16th June 1949. The case was again referred to the All India Industrial Tribunal but the same was returned as borne out by their letter No. 1066, dated 6th March 1950 as the cause of action had arisen after 13th June 1949. The employee accordingly moved this Tribunal and it was argued on his behalf by the Union representative that no permission for the discharge of the employee was obtained although the Tribunal was working.

The Bank's reply to the claim was that he was a nominee of the Treasurer working as Hundi Presenter. Regarding his first discharge it was submitted that the Bank wanted to abolish the post of Hundi Presenter owing to fall of business but due to certain restrictions imposed by Uttar Pradesh Government this could not be done. The restrictions however were subsequently removed and the Bank thereupon advised the Treasurer to abolish the post of Hundi Presenter.

The facts of the case are identical with the previous case described above. The position taken up by the Bank mainly was that the post of Hundi Presenter was abolished owing to the fall in business and as such this case also falls in the category of retrenchment and the usual retrenchment relief by way of compensation would

meet the ends of justice. The Bank is accordingly directed to pay him half month's salary with all allowances admissible for each completed year of service in a month's time when the award becomes operative.

(36) *Akshendra Kumar Jain*.—Shri Jain's grievance relates to the closure of Etawah Branch which has already been considered and he being one of the employees of this branch was discharged from service. It was contended on his behalf that the closure by itself was made without obtaining the previous sanction of the Tribunal and in violation to the dictates of the undertaking given by the Bank to the All India Industrial Tribunal (Bank Disputes). It was next urged that the termination of the services of this employee was thus not warranted by law and facts.

Shri Rastogi raised the preliminary objection that the subject was an officer of the Bank and does not satisfy the definition of 'workmen'. In regard to the point of permission having not been obtained and the infringement of the terms of the undertaking made before the All India Industrial Tribunal (Bank Disputes), Bombay, the same arguments were reiterated as made previously in other cases.

The legal objection that he was an officer is repelled in the light of the Delhi Bank disputes award of this Tribunal as Shri Jain happened to be the Accountant only and not the Manager. On merits this again is a case of retrenchment and the applicant will get the retrenchment relief by way of compensation at the rate of half month's salary plus all allowances admissible for each completed year of service and the Bank is directed to carry out the above order within one month from the date when the award becomes operative.

(37) *G. D. Chawla*.—The applicant was present in person and addressed the Tribunal in support of his claim. The facts briefly are that he joined the Bank's service in February 1943 as a Senior Clerk and was subsequently promoted to the status of an Accountant. In the year 1947 he was posted to Aligarh as Assistant Accountant and meanwhile his increment fell due but the same was withheld. He approached the Labour Commissioner as well as moved the All India Industrial Tribunal (Bank Disputes), Bombay. The Bank authorities got annoyed on his seeking the redress of his grievance through the Tribunal and ultimately discharged him from service by notice dated 29th April 1950. It was maintained that the Bank violated the provisions of Section 33 in discharging him from service when his case regarding the stoppage of increment was pending before the All India Industrial Tribunal (Bank Disputes).

Shri Rastogi resisted the claim and stated that the services of the applicant came to close on the closure of Khurja Branch which was running at a loss and that no discrimination was made in the case of Shri Chawla as the whole staff was retrenched and they became surplus. Regarding permission under Section 33 it was argued that the same was not necessary in the case of retrenchment.

The facts as given above are not disputed between the parties excepting that the case of the applicant was that the termination of his services was due to his approach to the All India Industrial Tribunal (Bank Disputes) to get his previous grievance redressed while the Bank case was that he had been retrenched along with the whole staff of Khurja branch which fact was not denied by Shri Chawla also. The only question for determination accordingly is as to whether permission under Section 33 was necessary or not. In this respect the question has already been discussed above in the case of Shri P. K. Sharma in this award and applying the same principle enunciated therein the contention raised by the Bank is repelled. The result is that Shri Chawla will be allowed retrenchment relief at the rate of half month's salary for each completed year of service with allowances admissible and the Bank is directed to pay the amount within one month from the date of the publication of the award.

(38) *Parmeshwar Din Misra*.—The Union representative on his behalf stated that the facts are given in the application and rejoinder in detail and that his grievance refers to the implementation of the All India Industrial Tribunal (Bank Disputes) award. The case was not seriously pressed.

Shri Rastogi opposed the application on the plea that since the interim award has already become invalid the question of implementation does not arise. Shri Misra had earlier sent his written arguments by post wherein he had explained the position in his own way at some length and dealt with the stoppage of increments for the years 1947, 1948, 1949 as well as claimed the grant of Dearness Allowance with retrospective effect in the terms of the Interim award of the All India Industrial Tribunal (Bank Disputes) Bombay. Some of the reliefs asked for relate to the period earlier to 13th June 1949 and do not fall within the scope of the Reference. At any rate the relief claimed is based on an award which has since been declared invalid and the Union was also lukewarm in pressing his case. The same fails and is dismissed.

(39) *D. P. Khanna.*—His case is that he joined the Bank's service in 1943 and worked as Accountant in Calcutta branch. He got several increments in recognition of his services and was posted as Manager at Lakhimpur Kheri branch in 1946. He was however discharged on the ground that he had become surplus to the requirement of the Bank. It was contended on his behalf that the reason assigned by the Bank was incorrect inasmuch as he was replaced by one Shri B. C. Bansal and presumably was shunted off in order to make place for him.

Shri Rastogi raised a preliminary objection to the effect that the applicant admittedly was an Officer and his case is not triable under the Act.

The legal objection prevails in the light of the Delhi Bank disputes award of this Tribunal and the claim fails on this short ground. The same is dismissed.

(40) *Prem Behari Srivastava.*—This employee was working as Accountant in the Kanpur Branch of Bharat Bank. He was subsequently transferred to Jhansi and then to Mathura. It was stated by the applicant in his application that he could not join Mathura on account of his domestic circumstances; but in the course of arguments it was admitted that he did join Mathura and during his stay there certain charges were levelled against him and on enquiry it was found that he was responsible for all those irregularities and mistakes with the result that his services were terminated. Shri Kakkar arguing on his behalf further submitted that the charges levelled against him were frivolous as he was not connected with the offence alleged to have been committed by him. In this connection the Union representative explained the position at great length as to how the three parcels Nos. 75, 176 and 177 containing some woollen goods were received from Pakistan and were opened by Manager and subsequently were sold off at Rs. 60. The Manager-in-charge who joined his duty on 4th October 1949 however took exception to the conduct of Shri Srivastava, the Accountant, and reported against him for which he was charge-sheeted. It was argued that attitude taken by the Manager against the Accountant Srivastava was due to enmity as the applicant in capacity of an Accountant had taken objection in passing certain vouchers relating to the Travelling Allowance in favour of the Manager. In this connection reliance was placed on the vouchers dated 28th October 1949 and two vouchers in between 4th October and 28th October 1949. It was argued that these vouchers were passed without having obtained the signature of the Accountant against the normal procedure. Reverting to the facts it was emphasised that the parcels had been lying since 1947 and had to be sold off some time and Shri Srivastava acting as Manager in the absence of the Manager-in-charge sold them off under the instructions of the Head Office and no objection was taken at that time. It was however only when the Manager came back he out of spirit charge-sheeted him for selling the same at a lesser price. It was admitted that the enquiry was made in the matter and his explanation was called for and he was also allowed to lead his defence. But it was argued that that enquiry was only a partial one and was not made in the proper manner. The reply (Ex. A) and the one sent to the Head Office (Ex. B) were placed on the record. It was next urged that the head office did not send any independent man for the purpose of enquiry and that the same was a farcical one. Lastly it was urged that the All India Industrial Tribunal (Bank Disputes) proceedings was functioning in those days and it was obligatory upon the Bank to obtain permission for the purpose of dismissal. As that permission was not secured the order is bad in law and liable to be set aside.

Shri Rastogi in reply submitted that the facts with regard to the lying of the parcels were substantially correct but the position of the case actually is that when the Manager went on leave, Shri Srivastava officiated in his place and availed the opportunity of disposing those parcels on a much lesser price and put the Bank to loss. When the Manager joined his duty on the expiry of the leave of 4th October 1949 he reported to the head office on 8th October 1949 as evidence from Ex. 1 to the effect that an unfair dealing had been made and undue advantage was taken at the time of officiating and goods of the value of about Rs. 200 were disposed of at a much lesser price. The Manager thereupon gave a charge sheet to Shri Srivastava and subsequently the head office by their letter dated 17th November 1949 (Ex. 2) called upon him to submit his explanation in this connection. The explanation however was not forthcoming and a reminder was given to him dated 3rd February 1950 (Ex. 3). As no explanation was given he was suspended by order dated 13th February 1950 (Ex. 4). The applicant at long last submitted his explanation which was duly considered and was found unsatisfactory. The result was that on enquiry he was found guilty of misconduct and breach of trust and his services were terminated by letter dated 24th February 1950 (Ex. 6). Shri Rastogi further argued that the story of getting the vouchers signed by the Accountant forcibly was not in the knowledge of the Head Office and no report was made to the Head Office. The next argument advanced in this connection by Shri

Rastogi was that the defence version now propounded on behalf of the applicant was never lodged in the course of the enquiry nor mentioned in the explanation. Regarding no permission under Section 33, the Bank representative maintained that no permission was necessary under the old Act and the new Act came into force from 20th May 1950 while the incident relates to an earlier date. Lastly it was submitted that it was a case of breach of trust and in a Banking Company a man of doubtful integrity cannot be retained.

On the appraisement of the evidence and all the facts and circumstances the case appears to me rather on the border line. It is just possible that Shri Srivasta made an error of judgment in disposing of the goods which were lying for sometime at the lesser price. But this one fact is amply established on the record that the value of the goods was more than Rs 200. It is also in evidence that the man to whom the goods were sold had some connection with the applicant. I am therefore constrained to come to the conclusion that it is not a fit case for interference with the result that the same is disallowed.

(41) *Closure of Branches in U.P. and thereby terminating the services of Entire staff.*—The Union representative submitted that the arguments advanced regarding the closure of other branches may well be considered in this application also. The finding in the case of closure of Etawah, Mussoorie, etc have gone against the Union because the particulars of all the staff working there were not given by them in the application and in the case of individual employees on whose behalf claims were filed separately retrenchment relief by way of compensation has been awarded. This application must fail and the same is dismissed.

(42) *Shankar Lal Agrawal*.—The applicant was not present and the case was heard in absentia under the provisions of Rule 19 of Industrial Dispute (Control Rules) in order to safeguard his interests. This employee joined the Bank's service on the nomination of the Treasurer. His grievance is that his services were terminated when Karwi Pay Office was abolished and that he could have been justifiably absorbed in Banda branch where the same Treasurer continued to work. It was also stated that prior permission of the Tribunal was not obtained under Section 33 and the order of discharge was bad in law as well.

Shri Rastogi in reply submitted that Shri Agrawal was appointed particularly for Karwi Pay Office and so the Pay Office was dissolved his services *ipso facto* terminated. He was paid one month's salary which he accepted. Under the circumstances permission was not required and the question of compensation does not arise.

The case revolves on two issues, (1) whether the applicant was a Bank employee or the nominee of the Treasurer only, (2) whether he was appointed particularly for Karwi Pay Office. Regarding the first point it has been well-recognised by this time that the employees of the Cash Department are as good employees like others and as such the services of any one of the Cash Department could not be curtailed *ipso facto* on the retirement or resignation of the Treasurer as held in some of the previous awards. The decision accordingly centres round this assertion made on behalf of the Bank that he was appointed particularly for Karwi Office. In this respect is it to be noted that the date 1st July 1948 bears speak that he was appointed in the Cash Department at Karwi Office no doubt but no mention has been made to this fact that his services were only meant for that very office. In view of the fact that he was a Bank employee, if one office was closed he could be absorbed in some other office. In the absence of any plea that absorption was not possible the one plea that he was a nominee of the Treasurer and his services came to close *ipso facto* on the resignation of Treasurer must fail. In the result the claim succeeds as observed above in other cases and as prayer for reinstatement cannot be given effect to he will be held entitled to get the retrenchment relief awarded in the case of retrenchment. The Bank is therefore directed to pay half month's salary plus all allowances for each completed year of service within one month from the date of the publication of the award.

(43) *Radhey Shyam Agrawal*.—The facts of this case are similar to the case of other Codown keeper i.e. Shri J K Jain (at No 12) and others which have already been discussed and disposed of above. Shri Agrawal joined the Bank's service as a Codown-keeper under the guarantee of a Treasurer Shri Mool Chand in April 1941. The system of guarantee brokership was discontinued with the result that the services of this employee along with others were dispensed with. This case accordingly is one of retrenchment and the usual relief of compensation at the rate of half month's salary plus allowances admissible for each completed year of service is allowed. The Bank is directed to carry out the direction with one month from the publication of the award.

(44) *Gopal Chandra*.—The applicant was not present and the case was heard in absentia under Rule 19 of the Industrial Disputes (Central) Rules. His case disclosed from the application briefly is that he was an old employee of the Bank and when he was working at Nathdwara Branch Pay Office in Udaipur State; the management, closed the same branch with the result that he was thrown out of employment at the age of 33 when he was not in a position to seek any suitable job. The relief sought was for reinstatement in service and for the grant of gratuity and other allowances permissible under rules.

Shri Rastogi raised a preliminary objection that the place where he was working is in Part B State over which this Tribunal has no jurisdiction under the old Act. The new Act came into force in May 1950 and this cause of action arose earlier. On merits it was stated that as the branch was closed his services were terminated *ipso facto*.

On merits this employee is also entitled to the usual retrenchment relief given in the case of others but the cause of action arose in Part B State and in the light of the finding already given in several cases his claim fails on this legal ground viz., want of jurisdiction. The same is disallowed.

(45) *Koti Lal Khandwal*.—The applicant was not present and his case was heard in absentia. The case of the applicant put briefly is that the applicant joined the Bharat Bank in the year 1948 and although he worked for about a year still he was not confined inspite of the directions given in this respect under Conciliation Board award in Issue No. 87. His services, ultimately were terminated on 23rd July 1949 without assigning any reason. It was argued that the reason at the bottom was that a man related to the Treasurer was substituted in his place and as such his case was one of victimization. Reliance was placed on the All India Industrial Tribunal (Bank Disputes) award dated 18th February 1950 (page 242) in the case of Madan Lal Sharma and it was urged that the observations made by their lordships may be considered as arguments in this case.

Shri Rastogi in reply contended that the appointment was of a temporary nature because the permanent man had gone on leave and he was appointed in his place. He was granted further extension of leave up to 7th March 1950 on Medical ground and therefore this employee continued in service. It so transpired that the permanent man resigned and the Treasurer appointed another godown-keeper Shri Lakshman Das and this man's services came to close. The Bank however could not help him because he was a temporary hand and the Treasurer was not prepared to guarantee in his case. Reliance was placed on (Exhibits 1, 2, 3, 4 and 5) in this connection.

On the perusal of this evidence I find that the services of this employee also came to close on the withdrawal of the guarantee and as such his case shall have to be treated as one of retrenchment and the usual retrenchment relief at the rate of half month's salary plus allowances admissible could be allowed. But this case differs in one respect which is significant viz. that he was a temporary hand and was discharged before the completion of one year. No relief therefore can be made available and the application fails. The same is disallowed.

(46) *Closure of Banda Branch*.—Both sides stated that the arguments advanced in the case of the closure of Etawah, Mussoorie and other branches already dealt with be considered in this application also. I need hardly say that the finding given in the case of other branches shall apply in this case also with the result that the application fails as the closure was the result of shrinkage in the business of Bharat Bank as an uneconomic unit. The Union also did not give the particulars of the staff in the application and in the case of individual employees relief has already been granted from whatever branch they came. The application is accordingly rejected.

(47) *R. P. Jain*.—The applicant was not present and his case was considered in absentia under the provisions of Rule 19 of the Industrial Disputes (Central) Rules and the Bank representative was requested to state the facts both ways.

The facts as disclosed put briefly are that Shri Jain was working as Accountant in Banda Branch which was closed with the result that his services came to close. He joined in 1942 and was an old employee and it was stated in his application that he was the senior-most man and if there was any need of retrenchment the principle of 'last come first go' should have been applied but his services were terminated without having regard to seniority. It was claimed that he could be absorbed elsewhere, but the Bank did not pay any heed. The relief sought was for reinstatement with retrospective effect from 18th May 1950 and payment of emoluments for the intervening period.

Shri Rastogi in reply submitted that the absorbing capacity of the Bank was nil even in those days when he was discharged and the Bank was helpless. It was also stated that the Bank did not infringe Section 33 or violated the undertaking before the All India Industrial Tribunal (Bank Disputes) as the proceedings came to close in April and he was discharged in May 1950. It was further argued that he has been already paid one month's salary which he accepted.

His case also is covered under retrenchment policy adopted by the Bharat Bank and the only remedy is one of compensation. The same is allowed in this case also. The Bank is accordingly directed to pay him half month's salary with allowances admissible for each completed year of service in a month's time when the award becomes operative.

(48) *B. P. Rajbanshi and 11 others.*—The application relates to the withholding of increment in the case of several employees. As the increment has been released by this time the claim was not pressed by the Union representative and the same will be deemed to have been withdrawn.

(49) *Bhagwat Saran Chowkidar.*—The applicant did not turn up despite service and his case was heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The facts as disclosed from the application briefly are that his services were terminated by the Bank concerned but on his representation to the Conciliation Officer the Bank was directed to take him back, as well as to pay the dues for the intervening period. The Bank, however, did not see their way to make the payment but allowed him to rejoin his duty on his previous emoluments. Some correspondence ensued between the parties and the Conciliation Officer as well as the Labour Commissioner on the subject but to no avail and the claim filed by the applicant is for the payment of the arrears.

Shri Rastogi on behalf of the Bank in reply stated that the matter had already been adjudicated upon by the All India Industrial Tribunal (Bank Disputes) on the representation of the Union on behalf of Bhagwat Saran and the matter was amicably settled as borne out by the All India Industrial Tribunal (Bank Disputes) award published in *Government of India Gazette*—August 26, 1950, page 467. It was argued that under these circumstances this claim was not triable and the matter cannot be re-opened after having been settled by the competent authority. It was further stated that the amount of Rs. 300 was paid to him in full satisfaction of his claim.

I see no reason to disbelieve what has been stated by the Bank representative with the result that the claim needs no adjudication and is filed.

(50) *S. N. Mehrotra.*—The cause of action in this case admittedly arose in 1948 and the Union representative in all fairness stated that the claim does not fall within the ambit of the Reference and was wrongly preferred. In view of the above statement the claim is filed having been withdrawn.

(51) *S.P. Misra.*—The cause of action in this case arose in 1947. Shri Misra however arguing his own case submitted that so far as the cause of action was concerned it was a continuing one because the correspondence went on till December 1949 with the Bank in regard to his Provident Fund contribution and other claims relating to the payment of dues. It was maintained that the *terminus qua* for the purposes of limitation would therefore be when that correspondence closed.

Shri Rastogi on behalf of the Bank contended that there was no correspondence in regard to his reinstatement or discharge from service after 1947 and any correspondence relating to the payment of Provident Fund could not be taken as a continuing cause. It was also stated that he was working as a Sub Manager on the date of the termination of his services at Behar Sharif i.e. on 30th August 1947 and as such he was an officer and did not fall within the ambit of the definition of 'workman'. Both these objections obviously prevail and the claim is devoid of merit. The same is dismissed.

(52) *Girdhari Lal.*—The claim was filed through the U.P. Bank Employees Union but the Union representative did not press the claim. The same shall be deemed to have been withdrawn and is filed.

(53) *Pt. Chhotey Lal.*—He joined the Bank's service in July 1947 in the capacity of Head Cashier. It was alleged on his behalf that he served for a pretty long time and there was no complaint against him. His services were terminated on the plea that he had attained the age of superannuation i.e. 55 years.

Shri Rastogi, Bank representative, in reply while admitting substantially the facts of the case produced a copy of confidential report dated 21st September 1944

(Ex. 1) as well as Identity form for the employee (Ex. 2) whercin the date of birth of the employee was mentioned as well as a copy of the declaration form (Ex 3) which governs conditions of service. Coming to the point of retirement and the construction put on Rules 10 and 13 of the bye-laws it was argued that under the rules his services could bc retained on the express sanction of the higher authorities which was not given and as such the question of the continuance of service does not arise. Shri Rastogi however admitted that his case was recommended by the Treasurer for further extenston but under the rule the express permission which was to be given by the General Manager was not available and the recommendation was of no avail. Now the bye-laws of the Bank in regard to the age of superannuation are not mandatory and it no doubt rests in the discretion of the management to allow someone having attained the age of superannuation to continue. The argument advanced on behalf of the employee that the case was recommended by the Treasurer would rather show that the management duly considered his case for continuance but they did not see their way to agree. When the management applied their mind in a matter of discretion, I need hardly say that the discretion was exercised judiciously and this Tribunal cannot substitute its judgment in place of that. The application does not call for any interference and the same is disallowed.

Reference No. 33 of 1950

CALCUTTA NATIONAL BANK LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, P. C. Jain, etc. for the U.P. Bank Employees Union (appeared at Dehra Dun)

Shri Brajgopal Ganguli, Law Officer, for the Bank (appeared at Dehra Dun).

(1) *Ajit Kumar Das*.—His case is that he was working at Kanpur Branch of the Calcutta National Bank when he received the orders of transfer to Calcutta on 16th October 1949. He, however, lodged a protest against the transfer order and on the intervention of the Labour Department his transfer was cancelled by the Board as borne out by the Deputy Labour Commissioner's letter dated 15th November 1949 (Ex. A). The Bank authorities however disregarded the Labour Department order and not only refused to cancel the transfer order but furthermore terminated his services on the same day on the ground of unsuitability. It was maintained that the action of the Bank was arbitrary and unjustified and contravened the findings of B. B. Singh award as well as the provisions of Section 33 of the Act. It was further argued that the applicant was an active member of the Union and action taken by the management against him was actuated with the motive of crushing the genuine Trade Union activities. Shri Kakkar arguing on his behalf urged that it was a case of high-handedness on the part of the Bank because the services of the applicant were dispensed with in defiance to the order of the Regional Labour Commissioner.

The Bank representative in reply argued that the transfer was made in the interest of the institution and did not violate the provisions of the Act. Replying to the contention that the transfer contravcned the U.P. Government order dated 18th April 1949, it was contended that Shri Ajit Kumar Das is a Bengalee and in his case the concept of the order does not apply inasmuch as the same was passed in order to safeguard the interest of those who belong to U.P. State. It was further argued that Shri Ajit Kumar Das did not comply with the transfer order and as such vacated his post. The next argument in this connection is that the applicant had already launched prosecution against the Bank in the Court of the Additional Magistrate, Kanpur, whereby the Chairman of the Bank was fined to the extent of Rs. 200 and that the applicant was now debarred from moving into the matter once again in the Tribunal.

Now the transfer order was set aside by the Regional Labour Commissioner as evidenced from Ex A and the same was given effect to as borne out by Ex. B. It is accordingly wrong to say that the Bank refused to comply with the Regional Labour Commissioner's order. The Bank, however, terminated the services of Shri Das treating him as an undesirable man without putting to charge or giving him any opportunity to explain. The necessary permission under Section 33 was also not sought for and under these circumstances the order of discharge was not warranted by law and facts. The plea advanced by the Bank that the applicant had refused to join Calcutta is negatived by the documentary evidence (Ex. B)—copy of letter dated 18th November 1949 sent to the Labour Commissioner in reply

to Ex. A his order cancelling the order of transfer. The operative part of Ex. B reads as follows:

"In compliance with your letter under reply we have sent a letter to Ajit Kumar Das, cancelling the order of transfer, a copy of which is enclosed."

This clearly indicates that the Bank authority complied with the order of Labour Commissioner and Shri A. K. Das was not required to go to Calcutta. The plea that he vacated his post for not complying with the transfer order is accordingly untenable as well as pointless. The Bank representative finally submitted that the applicant had already received the amount of his security deposit as borne out from Ex. 2—receipt—and as such had no further claim against the Bank. This receipt (Ex. 2) however does not say anything as to whether he abandoned his claim for reinstatement or any other claims and got the security deposit money in final settlement of his claim. The words used in this connection are: "Received payment together with interest up to 18th November 1949." The relief therefore shall have to be determined on the merits of the case discussed above.

Now the applicant admittedly was a permanent hand and was neither charge-sheeted nor any enquiry was made into his conduct as to attract the penalty of dismissal from service. Necessary permission also was never asked for and under the circumstances the claim must succeed. In the result the Bank is directed to take him back in service and to pay back salary plus allowances admissible under rules for six months prior to reinstatement as compensation for wrongful termination within one month of the publication of the award.

(2) *Tribeni Goala*.—His grievance is that he was an old employee having put in 7 years service but was discharged due to Trade Union activities. It was alleged *inter alia* that he was neither charge-sheeted nor was communicated the reason of his dismissal. It was further argued that the order of discharge was bad in law also as the express permission of the Tribunal under Section 33 was not obtained prior to his discharge from service. The Bank representative opposed the claim and submitted that his case was one of retrenchment because he had become surplus. It was further stated that the practice of charge-sheeting was not followed by this Bank and furthermore it was not obligatory to charge-sheet anyone under B. B. Singh award wherein it is laid down that the Bank management should adopt a proper rule for making proper charges and explanation. Finally it was urged that the action of the Bank was not *mala fide* and was not actuated by any ulterior motive. The record reveals that the plea of retrenchment was not urged in the written statement. The same has not been substantiated by any evidence even now at the time of the hearing and it appears that the Bank either is not disclosing the true facts which led to the termination of the services of this employee or had done so arbitrarily without securing the permission of the Tribunal. The applicant was an old employee and appears to have been shunted off without any good reason if not in a highhanded manner. Under the circumstances the claim must succeed and the Bank is directed to take him back in service as well as to pay him back salary with allowances admissible for six months prior to the reinstatement as compensation for wrongful dismissal.

(3) *Sheo Lal Dubey*.—His case is that he was working as a Peon in the Calcutta National Bank and put in about 7 years service. He happened to be an active member of the Union also and the Bank Manager asked him to resign from the Union to which he did not agree. The management notwithstanding of his old service terminated his services without obtaining the permission of the All India Industrial Tribunal (Bank Disputes) which was functioning in those days on 7th December 1949. It was argued that his case of victimization and the relief sought was for reinstatement.

The Bank representative denied the allegation of Trade Union activities and alleged that he was charged for misusing the Bank's property. It was argued that an enquiry was made by the Manager and he was called upon to explain once in 1948 but he again repeated the conduct of using the Bank's property and he was discharged from service on that account. The plea of the Bank is that this was a case of misconduct because the applicant was misusing the Bank's property. The Bank representative did not, however, bring any evidence documentary or otherwise on the record to show that he was actually charge-sheeted or any due enquiry was made. In the absence of this evidence it is difficult to accept the bare allegation of any one of the parties. The initial onus of proving the plea advanced in the absence of necessary permission of the Tribunal was upon the Bank which has not been discharged. I have, therefore, no alternative but to allow the claim with the result that the Bank is directed to take back the applicant in service and to pay the emoluments for the period of six months with all allowances admissible prior to reinstatement by way of compensation. This direction will be carried out by the Bank within one month when the award will take effect.

(4) Application of the U.P. Bank Employees Union, Kanpur regarding transfer of the following persons from Kanpur branches to Agra branch which was subsequently closed:

- (a) Santosh Chandra Das
- (b) Kishori Mohan Paul
- (c) Moti Lal Das
- (d) Dinesh Ranjan Choudhury
- (e) Deo Nath Rai, and
- (f) Jugernath Pd.

The Union's case is that Shri Santosh Chandra Das and others mentioned above were the most important Trade Union workers of the U.P. Bank Employees Union, Kanpur. Their activities were not liked by the management and the Bank authorities were pressing upon them to resign from the Union on the threat of their dismissal. It was alleged *inter alia* that the Chairman of the Bank wrote a letter to the Kanpur Manager asking him to submit the names of the employees who were the members of the Union and also asked about those who had resigned from the Union in order to enable the management to make an increase in their salaries. It was also stated that these employees were transferred to Agra in group and in their place four persons from Agra were transferred to Kanpur and two from Calcutta branch and subsequent to this transfer, Agra branch was abolished with the result that their services were terminated. Shri Kakkar, the Union representative strenuously contended that the action of the management as revealed from the letter of the Chairman and the subsequent action taken by way of group transfer was a proof positive of the fact that the Bank wanted to crush the Trade Union activities and that this case was one of victimization of a severe type. It was next argued in this connection that when the transfers were under contemplation, a stay order was issued by the Conciliation Officer directing the management not to transfer those employees to Agra branch but no heed was paid. Furthermore the Regional Labour Commissioner also issued the stay order on the Bank not to close the Agra branch during the pendency of the Tribunal's proceedings but the same also fell on deaf ears. It was vehemently urged that the injunction and the stay orders were flouted by the Bank authorities and the discharge of the employees was thus arbitrary and was not warranted by facts as well as law. The relief sought was for reinstatement of Shri Santosh Chandra Das and others and for the payment of the arrears of pay and allowances for the intervening period and other benefits accruing during that period. In support of the contention a copy of the calendar for the year 1950 (Ex. A) was produced in evidence and it was contended that Agra branch was not mentioned in the calendar which would indicate that the Bank was contemplating to close this branch earlier in 1950. A letter dated 11th January 1950 (Ex. B) addressed to the Conciliation Officer, Kanpur, letters dated 9th January 1950 (Ex. C) and (Ex. D) were relied upon in respect of the closure of branch. The last argument advanced was that the order of discharge was bad in law for want of permission also which was obligatory upon the Bank to obtain under Section 33 as the proceedings were pending before this Tribunal as well as the question of interim relief before the Conciliation Officer and no change could be made.

Shri Ganguly in reply submitted at the very outset that it was much too wrong to say that the transfers were group transfers because the same were made on different occasions viz. in the first week of December, 3rd week of December and in the first week of January and as such it may not be considered that the Bank was actuated to make any group transfer with any motive. It was stressed that these transfers were the outcome of reshuffling in the staff from head office and outside branches. Replying to the contention that these transfers were made in order to crush the Trade Union activities of the workers, it was submitted that these employees were given increments in the month of January which would show that the Bank had no prejudice against them even if they had any activity in Trade Unionism. Increment orders (Exs. 1 to 6) were produced in evidence and were relied upon. It was further argued that the calendar produced in evidence was not admissible and be not treated as a part of *evidentia* although it is admitted that Agra branch was dissolved in March 1950. It was concluded by the Bank representative that the transfers were not made in order to seek these employees by sending them to Agra branch. Shri Ganguly stoutly denied the assertion that the Chairman of the Bank had asked for the names of the members of the staff who are members of the Union and also the names of those who have resigned from the membership of the Union. Lastly, it was urged that the closure

of Agra branch was not for the sacking of the employees but it was in order to rehabilitate the Bank's position as the business had gone down and this branch was closed as measure of economy.

The above discussion was made in general and would apply in the case of all the employees mentioned above. On merits taking each individual case separately it was further stated that so far Shri Deo Nath Rai is concerned this employee has received all his dues in full satisfaction of his claim as mentioned in the receipt dated 11th October 1950 (Ex. 6) given by Shri Rai.

Regarding Kishori Mohan Paul it was submitted that a certain agreement has already been arrived at between Shri Paul and the Bank and he has been re-employed; while in the case of Shri Moti Lal Das a criminal case is pending against him in regard to certain defalcations made in the accounts by him.

Regarding Santosh Chandra Das it was further stated that he has been re-employed in the Calcutta Insurance Company and has resigned from the Bank.

Regarding Jugernath Pd: It was stated that he too has been re-employed and is serving i.e. IG.S Fire Arms Department.

Shri Ganguly filed an application for producing certain documents in the case of Shri Kishori Mohan Paul and Shri Moti Lal Das and was allowed to produce by the Last day of hearing at Dehra Dun but the same has not been filed upto to-day at the time of the dictation of the award.

The working of this Bank appears not to be smooth and on the examination of the facts and evidence brought on the record and taking a broad view of the matter I am of the opinion that in the case of Shri Santosh Chandra Das, Shri Kishori Mohan Paul and Jugarnath Pd. as they have since been re-employed somewhere else, no interference is called for. At any rate they are entitled to retrenchment relief which has been allowed in other cases of retrenchment on the closure of branches at the rate of half month's salary plus all allowances admissible for each completed year of service and the Bank is directed to carry out this Direction within one month from the date when the award becomes operative.

The case of Deo Nath Rai, however, stands on a different footing. He, in the light of Ex. 8 wherin he has mentioned that he received his dues in full satisfaction of his claim and that he has no grievance whatsoever against the Bank, the claim fails and is accordingly disallowed. This brings me to the case of Shri Motilal Das and Dinesh Ranjan Choudhury.

Regarding Moti Lal Das: A criminal case against him is still pending on the basis of certain defalcations and both sides failed to disclose full facts regarding that prosecution and the case was only discussed in regard to the closure of the branch and the retrenchment of his services. I am therefore unable to come to any conclusion in his case and the question of his service shall rest on the finding of the criminal case one way or the other. It is directed that in case he is acquitted of the charge in the criminal case the Bank should re-consider his case afresh.

Regarding Dinesh Ranjan Choudhury: The grievance of this employee was for the payment of arrears of leave and in this connection it was alleged that 50 days privilege leave was due to him when he applied for one month's leave from 13th January 1950 which was orally granted and he was told by the Manager to proceed on leave but subsequently he was not paid the salary for the leave period to which he was entitled. Shri Ganguly arguing on behalf of the Bank submitted that the report of the Manager on the leave application was to the effect that if another Cashier be sent in his place he could proceed on leave. As it was not possible to send any other Cashier the leave was not granted. It was contended that the applicant could not claim the leave as a matter of right and B. B. Singh award was not applicable.

Now this fact is not denied that the applicant was allowed to proceed on leave and furthermore in terms of B. B. Singh award and Conciliation Board award in question of leave was discussed in Issue Nos. 61 and 62 and the applicant was entitled to the leave asked for. In the result the claim succeeds and the Bank is directed to pay the applicant one month's salary for the period of one month's leave at the admissible rate. This direction will be carried out within one month from the date when the award becomes effective.

(5) *Sita Ram*.—The employee was working as Accountant at Bareilly Branch of the Bank and his grievances is that he was transferred to Calcutta owing to

his Trade Union activities. Subsequently the Bank terminated his services on 5th October 1949 in contravention of the provision of Sec. 33 of the Act. The relief sought was for reinstatement and for the payment of dues for the intervening period.

The Bank representative raised the preliminary objection that the employee concerned was an officer and did not satisfy the definition of workman. On merits it was submitted that he was transferred because his service record was bad and he was in the habit of taking leave much often. In this respect it was stated that he had taken more than six months leave in one year and the management thought it proper to transfer him to Calcutta. He, however, applied for six months more leave but was called upon to resign and was taken back in service sometime after. It was maintained that the transfer was not actuated by bad labour practice. The applicant, however, did not comply with the transfer order and again asked for one month's leave which was granted and he was ordered to join his post on the expiry of the leave period. He, however, did not join again and continued absenting himself whereupon the Bank was constrained to terminate his services as he had vacated his post. Finally it was submitted that as the Bank wanted to curtail the number of staff his post was not filled.

Shri Kakkar in reply repudiated the argument and on the point of transfer argued that no one was sent to Calcutta in place of Shri Sia Ram and in point of fact the order of transfer was an excuse and the services of the applicant were terminated.

Now the legal objection falls as the applicant was working as an Accountant and in the light of Delhi award he was not an Officer. On merits, I am of the opinion that the transfer to Calcutta was not justified but the attitude adopted by the applicant in absenting when no further leave was granted to him again could not be countenanced. The item of transfer does not fall within the scope of the reference and furthermore it forms only the background of the real grievance viz. the discharge from service. In view of the fact that the applicant remained absent for a pretty long time, he had vacated his post with the result that the application is disallowed.

(6) *Lallan Babu Saxena*.—He joined as an apprentice in 1946 and was confirmed after one month. He served for 3 years and there was no complaint against him. His services were suddenly terminated on 11th July 1949 on the ground of extra staff. The order of discharge (Ex. A) was produced wherein it was stated that his services were no longer required. It was also urged that the discharge was made without obtaining the prior sanction under Section 33 and the legal provisions were infringed and the Bank failed to maintain the *status quo* during the Tribunal's proceedings. Reliance was placed on (Ex. B).

Shri Ganguly submitted that the case of the subject already came up for adjudication before the All-India Industrial Tribunal (Bank Disputes) and the Union representative withdrew as published in the award and it cannot be reagitated here now. On merits it was submitted that one of the constituents of the Bank prosecuted Shri Sukh Das Narain and Shri Saxena was cited as a prosecution witness. He, however, deposed for the accused and the learned magistrate while dealing with his evidence made certain remarks against the conduct of Shri Saxena. This roused suspicion against him in the mind of the management that such a man should not be kept in the Bank's service and his services were dispensed with. It was urged that the Bank was justified in doing that under the Model Standing Rules. He, however, was paid his dues.

The matter admittedly came up before the All-India Industrial Tribunal (Bank Disputes), Bombay, (published in the Gazette of India dated 26th August 1950—page 471). The words regarding the withdrawal used therein reads as follows:

"Mr. Kakkar appearing for the employees withdraws the cases and therefore no order need be made."

Shri Kakkar arguing now on behalf of the employee submitted that as the cause of action arose after 13th June 1949 and his case could not be heard by the All India Industrial Tribunal (Bank Disputes) and was withdrawn on technical ground and no decision was made on merits. It was maintained that as the cause arose after 13th June 1949 it was for this Tribunal now to dispose of the case on merits. The explanation given by the Union representative appears to be sound one in view of the fact that the services of this employee came to end in July 1949. But I am not prepared to agree to allow reinstatement as it appears to me that this Bank also having closed several branches is not in a position to absorb the

discharged employees. As this case is one of retrenchment he is entitled to half month's salary plus all allowances admissible for each completed year of service. The Bank is directed to carry out the direction within one month from the date when the award comes into force.

(7) *Closure of Agra Branch.*—The Union representative arguing on behalf of the retrenched employees of Agra branch submitted that the closure of Agra Branch was actuated by the avowed method of crushing the Trade Union activities of the employees and it was earnestly urged that the Tribunal should direct the Bank to re-open the branch which was done sheer for crushing the Trade Union activities. Lastly it was urged that the closure of branch required prior permission of the Tribunal under the provisions of Section 33 and the same was wilfully neglected. Reference was made to the six employees already dealt with at No. 4 above.

Shri Ganguly in reply submitted that it was too much to say that the management was out to close their business sheer in order to remove some of their employees when their own reputation and business was at stake. The hard fact, the Bank representative proceeded, was that on the partition of the country on account of the depression and slump in business, it had become necessary for the Bank to close down some of their branches including the Agra branch under the stress of circumstances. The Bank furthermore had not started any new branch since 1947. Replying to the legal objection that no permission was obtained it was argued that there is no provision on any status that the Bank cannot close any branch and Section 33 deals with dismissal, discharge or change in conditions of service of the employees.

Now the cases of the employees whose services were terminated on the closure of Agra branch have already been dealt with in their separate applications and in some cases retrenchment relief has been allowed. Shri Kakkar however contended that the closure of Agra Branch rather amounted to lockout and that the Bank should be directed to re-open the Branch because the closure was made in order to crush the Trade Union activities of the employees. I am afraid the prayer asked for goes too far and in the absence of any material as to whether it was a case of lockout no such relief can be granted. In the result the application becomes infructuous and the same is filed.

XII. Reference No. 37 of 1950

COMILLA BANKING CORPORATION LTD.

APPEARANCES: None for the Bank,

Shri K. Biswas for the Bank. (Appeared at Dehra Dun).

Prabhu Narain Kackar.—The case of the applicant is that he was working as a Cashier but his increment was withheld in the year 1947 and he was treated as a Lower Grade Clerk. It was urged that according to the terms of B. B. Singh award he should have been placed in the Upper Grade which begins from Rs. 60 to Rs. 150 but his increment was stopped at Rs. 133. The other grievance was that he was not allowed Interim relief which was granted to all other employees of U.P. Banks in 1949.

The Bank representative raised the preliminary objection to the effect that the cause of action regarding increment relates a period prior to 13th June 1949 and as such the Tribunal was not competent to take up this case. On merits it was submitted that in terms of B. B. Singh award the grade of Rs. 60—150 was fixed for graduates and as the applicant was non-matriculate, he was not entitled to higher grade in terms of B. B. Singh award. It was next argued that in terms of B. B. Singh award, he could come up to Rs. 121-8 only but he was already getting Rs. 133 basic pay plus Dearness Allowance. Regarding the implementation it was submitted that the same has already been held invalid and furthermore was not permissible in his case in the light of observation made in para. 8 of the award whereby certain deductions could be made in certain cases.

Both the objections raised by the Bank prevail with the result that the application is disallowed.

XIII. Reference No. 40 of 1950

GADODIA BANK LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, Shri P. C. Jain, etc., for the U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun).

Shri Babu Lal, Manager, Jaipur Branch for the Bank (appeared at Dehra Dun).

(1) *Application filed by Shri Madanlal Gupta, representing himself and Shri K. D. Misra, (2) Shri J. B. Kapoor, (3) Shri L. D. Bajpai and (4) Shri N. C. Agarwal.*—This application was filed by one Shri Madanlal Gupta for himself and on behalf of four others viz., (1) Shri K. D. Misra, (2) Shri J. B. Kapoor, (3) Shri L. D. Bajpai and (4) Shri N. C. Agarwal. None of them turned up. Shri Madanlal Gupta, however, sent a letter dated 1st May 1951 and requested the Tribunal to decide the case on the score of pleadings. The application was heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The facts as disclosed from the application briefly are that all the five applicants were the permanent employees of Gadodia Bank. They were working satisfactorily but the Bank management converted Kanpur branch office into Pay Office whereby the services of one Manager and one Peon were only retained and all others were discharged. It was contended that the Bank had given an undertaking to the All-India Industrial Tribunal (Bank Disputes), Bombay, to maintain the *status quo* during the pendency of the proceedings of that Tribunal but the same was not respected and as such the management infringed the provisions of Section 33 of the Act. The prayer sought for was for the reinstatement and for the payment of back salary for the intervening period and other benefits.

The Bank's reply to the complaint was that the retrenchment of the applicants was due to the policy of retrenchment of staff on account of depression in business. It was further argued that the employees have not stated that they were concerned with any Union activities or discharged on account of Trade Union activities and as such the order of retrenchment or discharge from service could not be said to have been made *mala fide*. Reference was made to the reports of the Directors and as well as the Balance Sheet for the year 1949 wherein the Directors have remarked that Kanpur branch had become a liability on the revenue of the Bank and should be closed. It was maintained on the strength of this documentary evidence that the employer was within its right to close any branch in order to rehabilitate their Banking position and was not out to injure the interest of the employees in any way. Reference was also made to a statement of Profit and Loss embodied in the written statement (paragraph 6 to 9) and it was urged that re-conversion of Kanpur Pay Office to a branch was not at all possible even in the near future and as such the discharged employees could not be absorbed. Replying to the contention that permission under Section 33 was necessary before the closure of a Branch owing to the undertaking referred to above, the Bank representative submitted that the Branch was closed in good faith and not due to any bad labour practice and under these circumstances such permission was not necessary for them. Reliance was placed on the award given in the case of one Jamuna Prasad Singh (published in the Gazette of India Extraordinary dated 4th February 1950 at page 764).

On merits on the appraisement of the whole evidence brought on the record and on going through the figures cited in support of the closure, I feel inclined to hold that the Bank had made out a case for the closure of the branch or its conversion to Pay Office and as such the question of the revival of the branch and reinstatement of the employees does not arise. The other contention raised in this connection was that the order of closure and the termination of the services of the employees for want of permission was illegal. The stand taken up by the Bank in reply as stated above was that such permission was not necessary and reliance was placed on the award of Jamuna Prasad Singh (published in the Gazette of India Extraordinary dated 4th February 1950—page 764). The question of permission in general had already been discussed in the case of Prem Kishore Sharma (of Bharat Bank Ltd.) (3) in this award and the legal position has been discussed therein. This new citation of course was not considered in that case and on the perusal of this award which is a short one I find that the objection was not posed before the Tribunal in this case in regard to permission and only one month's salary in lieu of notice was claimed which was granted. The authority accordingly is not in point and the finding already given viz. that permission in retrenchment cases is necessary and is repeated here also. In the result the applicants will be awarded half month's salary for each completed year of their services with allowances admissible as compensation by way of retrenchment relief which amount shall be paid to them within one month with effect from the date when the award becomes operative.

(2) *Bhola Nath Mehrotra*—This application was filed in individual capacity but the applicant did not turn up. He, however, by his communication dated 3rd May 1950 made a request to decide his case on merits. The case was accordingly heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The facts disclosed from the application are short

and simple one: The applicant joined the Bank's service as Cashier in Sandla Branch on 18th June 1949. His services, however, were retrenched from the evening of 18th March 1950.

The Bank's reply was that the discharge was the outcome of retrenchment policy and that in the absence of any assertion that the same was brought about due to bad labour practice, it was not a case of victimization. The record reveals that this employee was also working at Kanpur branch which was closed on account of fall in business and heavy loss incurred by the Bank as stated in the case of Shri Madanlal Gupta and four others. It was further argued that this employee was appointed on the assumption that he would provide security of Rs. 1,000 but he only deposited Rs. 500 and until the time of retrenchment the remaining sum was not paid and he was still being treated as a temporary hand. Under these circumstances it was claimed that he was the first man to go being the junior-most as evidenced from the Seniority List produced (Ex. 1).

On the appreciation of the facts and circumstances this case also shall have to be decided as one of retrenchment and as the order of reinstatement in his case does not appear to be feasible he is awarded retrenchment relief at the rate of half month's salary for each completed year of service plus all allowances admissible. The Bank is directed to carry out the direction within one month from the date of the publication of the award.

(3) *Shri Ram Kapoor*.—This employee joined the Bank's service as a godown-keeper cum cashier cum clerk and was working satisfactorily. His services, however, were terminated on the 30 November 1949 without obtaining permission under Section 33. It was urged that the order of discharge was bad in law inasmuch as the provisions of Section 33 were violated. Replying to the contention raised by the Bank in the written statement that the employee was a temporary hand Shri Kakkar argued that so far the sanction under Section 33 was required, it was not material as to whether the man was working temporarily or on permanent basis.

The Bank representative in reply submitted that the appointment of Shri Ram Kapoor was temporary and the fact was very well known to him that his confirmation would be made at the discretion of the Bank as borne out by the Bank's letter (Ex. 1). Under the circumstances it was urged that permission was not necessary because the employment was temporary and he was not confirmed. Finally, it was stated that this employee has already been re-employed in some other Bank.

The employee in question was admittedly a temporary hand and as held in previous awards, the employer was within his right to confirm him or not in service as evidenced from the original letter of appointment (Ex. 1). Under the terms of the order of appointment the claim is not sustainable and the same is dismissed.

(4) *Panna Lal Sharma*.—This claim was preferred through the U.P. Bank Employees Union and the Union representative narrated the long story from the start of his service to the date of the termination of his services. Relief claimed was not only for reinstatement but also for the payment of certain travelling allowance amount as well as salary and allowances which were not paid to him in the course of his services. Reliance was placed on several letters (Exhibits A to P) produced in evidence relating to the correspondence in connection with the payment of travelling allowance and other incidents which occurred in the course of his service.

Shri Babu Lal, Bank representative, in reply submitted that so far the travelling allowance bill was concerned the bill in dispute related to his own mistake as he went to Philkhowa Branch in order to rectify his mistakes which he committed in the course of his stay there and consequently the Bank could not incur any expenditure of his going there. On the question of long leave and abstention from duty it was contended on behalf of the Bank that although the employee was warned that no further extension would be granted to him if he did not join his duty and that he would be treated as one who had vacated his post still the Bank did not come to any decision and the Central Office allowed him to resume his duties on 30th December 1949. The applicant, Shri Sharma, did not however join and in order to cover his own faults and abstention from duty, moved the Tribunal after about six months time. The argument advanced precisely was that Shri Sharma had vacated his post on his own accord and notwithstanding of opportunities given to him to join his duty he was defiant and under these circumstances he was not entitled to be taken back in service after such a long time. In regard to the leave which was not granted to him,

it was argued that the application dated 22nd September 1949 was not supported by any Medical Certificate and the certificate was subsequently filed in October with another application which naturally gave rise to certain suspicions. It was next urged that the cause mentioned in the certificate was the relapse of Typhoid while in the applications of September and October for leave, it was maintained that he was weak and his family circumstances did not allow him to join. Finally, it was pointed out that the applicant made his appearance before the All-India Industrial Tribunal (Bank Dispute) on the 21st as well as 22nd September which would normally show that he was not suffering from any such disease which could incapacitate him from attending office. Reference was made to the order of the All-India Industrial Tribunal (Bank Disputes) in his case (published at page 255 of the award at No. 31).

The assertion of the Bank representative that Shri Sharma actually attended the proceedings of the All-India Industrial Tribunal (Bank Disputes) in pursuance of his case was denied by the Union representative and it was stated that Shri Sharma did not appear and the case was conducted on his behalf by the General Secretary of the U.P. Bank Employee Union. Shri Panna Lal Sharma was not present and so did not come in the witness box to admit or deny this fact which is rather material in appreciating the position with regard to his absence from duty on account of illness. His case as borne out from the award of the All-India Industrial Tribunal (Bank Disputes), Bombay, came up before their lordships of the Tribunal but appearance of parties was not noted. In these circumstances it is difficult to come to any definite conclusion on this evidence; but circumstances sometimes speak more than facts and regard being had to these I am of the opinion that the Secretary of the Union who attended the proceedings at Dehra Dun could come into the witness box and swear to the effect that Sharma did not attend the proceedings at Bombay. The resume of the facts in the matter of leave given in the written statement (paragraphs 6 to 9) which need not be re-produced for the sake of brevity moreover amply go to show that the employee wanted to stick to his place at Phillkhowa and for a pretty long time was avoiding to join his duty at Bara Banki. At long last when he could not get any further leave he decided to go to Bara Banki on the 24th December 1949 and approached the Manager to put him on duty. In view of the fact that he had absented for a pretty long time the Manager advisedly asked him to wait in order to receive instructions from the Central Office whereupon Shri Sharma sent a telegram (Ex. 5) dated 26th December 1949 which reads as follows:

Ex. 5.—“Instruct Manager to allow me resume duty wire—PANNALAL”.

Ex. 6.—Allow Pannalal resume duty—Central Office”.

Now Shri Sharma was awaited to join on the receipt of the telegram but he did not turn up to resume duty and there is nothing on the record to show that he approached the Management by correspondence or otherwise that he was prepared to take up the duty. The background of this case fully narrated in the written statement has some significance but in the light of the telegram of 30th December 1949 (Ex. 3) whereby Shri Sharma was allowed to resume duty, one may not attach any importance to the sequence of incidents relating to his leave, absence from duty, illness, etc. as the Bank allowed him to resume duties notwithstanding of latches on his post. It is problematical as to what made him not to join at Bara Banki when under the instructions from the Central Office he was actually allowed to resume his duty despite his avoidance of duty for a pretty long time on the plea of illness and forced family circumstances. These hard facts pointedly go to show that the applicant did not like to leave his home place Phillkhowa to join at Bara Banki although the Bank management allowed him to resume his duty. The claim under determination was again filed on the 13th June 1950 i.e. about 6 months after. They say there is a limit to everything and to my mind the limit was reached in this case and no management could possibly afford to wait for him to come to duty at his pleasure and the one and the only alternative was to treat him as an absentee who had vacated his post and I have no hesitation in upholding the decision arrived at by the Bank. The result is that the claim so far the main relief viz. of reinstatement is concerned is dismissed. His other claim was in regard to the payment of travelling allowance which expenditure he incurred in going back to Phillkhowa after he had already been transferred to Bara Banki. His case was that he went on the asking of the Bank to complete certain work which left there while the Bank's case is that Phillkhowa was his home place and he went of his own accord for the rectification of certain mistakes to which he was conscious and stayed there for some days and the Bank was not responsible for the travelling allowance claimed by him. There is some correspondence on this question also which has

been placed on the record and on going through that and in the light of the conduct of the employee in general I have not been able to persuade myself to accept the version given by the applicant and the one made by the Bank appears to me the true position in this respect. In the result that part of the claim is also disallowed.

(5) *Ummad Singh*, (6) *Prem Ballabh*.—These two cases were not pressed and are deemed to have been withdrawn. Ordered accordingly.

XIV. Reference No. 41 of 1950

HIND BANK LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, Shri P. C. Jain, etc. for the U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun).

Shri P. K. Mukherjee, Manager, for the Bank (appeared at Dehra Dun)

Jagdish (Peon).—This employee was working as a Peon and his services were terminated without charge-sheeting him on 17th November 1949. It was alleged *inter alia* that he was an active member of the Union and the action of the Bank against him was arbitrary due to his Trade Union activities. It was urged that his services were dispensed with during the pendency of the All-India Industrial Tribunal (Bank Disputes) proceedings without having obtained the necessary permission and the discharge order on that account was also illegal. Some documentary evidence was also adduced in support of the claim (Exhibits A to E).

Shri Mukherjee on behalf of the Bank in reply submitted that complaints were received against Jagdish Peon from the Jamadar dated 17th January 1949 (Ex. 1) whereupon a charge-sheet (Ex. 2) was given to him to the effect that he absented himself from duty and left the station and that he was behaving rudely with the Jemadar. In reply to the charge-sheet (Ex. 2) the Peon concerned submitted him explanation (Ex. 3) dated 17th January 1949 wherein he apologised unconditionally and further stated that in case he repeats his conduct he may well be punished at the discretion of the Manager. No order, however, was passed on that and decision was reserved and he was given time to correct himself. In the meantime he became a member of the Union and began to repeat his old habits. He again absented himself from duty without permission. He, however, used to send some chits that he was required somewhere only informing the Bank and having left without permission. It was on 17th November 1949 that a joint complaint made by the head clerk and the head Cashier was received against this Peon wherein it was stated that he passed insulting remarks and threatened to assault them and bluntly refused to take letters to constituents of the Banks as asked by them (Ex. 7). On the same day the Jemadar also made another complaint (Ex. 8). On these complaints the Manager discharged him from service by order dated 17th November 1949 (Ex. 9) on the ground of insubordination, absence without leave, etc. He was however paid one month's salary in lieu of notice although the Bank representative argued that it was not obligatory on the Bank. Replying to the argument of the other side it was averred that the Peon might have joined the Union after the first charge but it was not in the knowledge of the Bank that he was an active member. The matter was referred to the Conciliation Officer and the Conciliation Officer agreed that the action taken on the administrative side of the Bank was correct as evidenced from letter (Ex. 10).

The documentary evidence adduced by both sides reveals that the matter was referred to the Conciliation Officer as evidenced from a letter sent by the Conciliation Officer to the Manager dated 9th March 1950 (Ex. 10). The relative extract is re-produced in order to appreciate the position taken up by both sides:

Ex. 10.—“I entirely agree with the administrative position which you took in the matter. I also agree with you in principle that an employee can be dismissed for misconduct without the Bank Management looking up to the authority of the All-India Banking Tribunal for permission for such termination. But my Labour Inspector (Central), Kanpur, who made spot enquiry in the merits of the dismissal matter, reports that Jagdish was not charge-sheeted and his explanation was not taken and a proper order was not passed, in view of what has been laid down under para. 47 of the Award of late Shri B. B. Singh.

I would like to hear you in the light of the report submitted by the Labour Inspector.”

This document read with another letter of the Conciliation Officer dated 14th June 1950 (Ex. B) wherein it was stated that the Tribunal is a superior authority than the Conciliation Officer and so the matter was dropped from his side and the parties are advised to look for justice before the Industrial Tribunal; indicates that the necessary permission was not obtained. The facts of course taken together amply go to show that the Peon was not behaving properly and the management on more than one occasion had to reprimand him for his conduct and the only point to be answered is as to whether he was duly charge-sheeted for misconduct and his services were dispensed with on the basis of established offence. The order of discharge dated 17th November 1949 (Ex. 9), be-speaks that his services were terminated on account of his being unable to explain his conduct in leaving Bank premises during duty hours without leave and his insubordination and absence without leave or prior notice. Now, the facts given in these two documents (Ex. 9 and 10) are conflicting on the question of proper enquiry; but the original explanation submitted by the employee as evidenced from Exhibits 3, 4, 5 and 6 which are produced by the Bank side leaves little doubt on the point that the employee was given an opportunity to submit his explanation to the charges embodied in the charge-sheet dated 17th January 1949 (Ex. 2). I am therefore satisfied on going through this documentary evidence that the applicant was duly charge-sheeted and was called upon to explain. This procedure to my mind amounts to due enquiry and I see no good reason to substitute my judgment in place of the decision to which the management arrived at. In the result I do not think that it is a fit case for interference and the same is disallowed.

XV. Reference No. 42 of 1950
HINDUSTHAN COMMERCIAL BANK LTD.

APPEARANCE: Shri A. C. Kakkar, Shri V. M. Sekhri, Shri B. K. Porwal, Shri P. C. Jain, etc. for the U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun and Naini Tal sittings).

Shri Banarsi Dass in person, Shri K. D. Gupta in person, Shri J. N. Srivastava in person, Shri R. V. Mehrotra in person, Shri Amrit Lal Vijay in person, Shri G. N. Mehrotra in person, Shri Ram Saran Kapoor in person (appeared at Naini Tal).

Shri K. M. Bhatnagar, with Shri Uma Shankar Mehrotra, for the Bank (appeared at Dehra Dun and Naini Tal).

(1) *K. M. L. Nigam*.—The applicant was not present and the case was heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. He was an old employee and it so happened that on the 24th December 1949 he went on three months' privilege leave; but the Bank refused to pay him for the months of January and February 1950 on the plea that the same was treated without pay. Shri Nigam left the Bank's service having tendered resignation on the 7th March 1950 but he claimed salary for the leave period.

Shri Bhatnagar on behalf of the Bank opposed the application and placed his reliance on the calculations made in Exhibit 1 a communication dated 8th April 1950 sent to Shri Nigam by the Bank while accepting his resignation. The applicant was not able to refute these figures. Record further reveals that Shri Nigam was involved in a criminal case and was charge-sheeted whereupon he tendered his resignation which was accepted. In the course of enquiry this question was also examined as evidenced from the copy of the report of the Inspector of Branches dated 14th January 1950 brought on the record. This report reveals that his leave on Medical ground was not sanctioned and he was informed that the Bank's Doctor, when sent to examine him, reported that he was not available in his house and was out of station. Consequently the leave asked for on Medical ground was not granted and that period was treated as leave without pay. Shri Nigam as borne out from his letter of resignation left the Bank service on this account as well *viz.* that his leave was not granted. I do not see any good reason for interference in the decision arrived at by the Bank on the report of the Inspector of branches. In the result the claim fails and is dismissed.

(2) *K. D. Gupta*.—He was appointed as a Cashier on the recommendation of the Treasurer and although several persons were working under him and he used to supervise their work; yet when the post of Assistant Cashier fell vacant another man in supersession of his claim was made Assistant Cashier. He wants higher pay and grade as well as payment of arrears retrospectively since January 1947.

The claim was resisted by the Bank and it was argued that Shri Gupta was never designated as Head Cashier or Assistant Cashier and he could not arrogate

any higher position on his own accord. He was holding the post of a Cashier at Hardoi and even on the facts stated by him he was not eligible for that. The applicant confined his case on the allegations made in the application and did not adduce any evidence although he was present or came into the witness box to explain as to how he aspired the post of Head Cashier and for want of any such material his claim rather appears to be frivolous. The same is dismissed.

(3) *Jashoda Nandan Srivastava*.—The applicant joined the Bank's service in 1945. It was on the 4th November 1948 that he applied for leave and remained on leave up to 7th September 1949 with extensions. His applications were duly supported by Medical Certificates. It was alleged that in course of the leave period he was called upon to file a Medical Certificate from the Civil Surgeon but that letter was not received by him and subsequently he received another communication dated 7th July 1949 (Ex. A) wherein it was said that he could not be allowed to continue in the service of the Bank as he failed to join the Bank's service and has thereby voluntarily vacated the post. Shri Srivastava argued that as the letters from the Bank were not received by him he could not explain his position. Ultimately when he wanted to join his duty on 8th September 1949 at Hazratganj he came to know that his services had already been terminated. It was further argued that in regard to the non-receipt of certain letters from the Bank he made an application to the Superintendent of Post Offices as borne out from his letters dated 1st February 1951 (Ex. B) and also approached the Managing Director of the Bank to supply him with particulars regarding the numbers and dates of posting of the registered letters reported to have been returned during his sick leave as evidenced from his letter dated 3rd February 1951 (Ex. C). No reply, however, was forthcoming from the Bank's side. It was argued on the strength of these letters that the report made by the postman was incorrect that he had refused to receive those letters. In this connection it was further stated that when he was working at Bahraich branch there was some clash between the Manager Shri Ram Srivastava and the subject on the score of certain advances which the Manager wanted to make to a party and on which he did not agree to become a party. On his report certain enquiries were also made in the irregularities as evinced from the report of the Inspector of Godown Mr. Chopra (Ex. D). The Manager, Shri Ram Srivastava accordingly became inimical to him and during the applicant's leave period pursued a constituent of the Bank to file a complaint against the applicant and got him transferred to Hazratganj branch.

Shri Bhatnagar arguing on behalf of the Bank submitted that the story of illness advanced by the applicant was negatived by the report of the postman as evidenced from the three envelopes received back undelivered. It was further argued that the disease mentioned by the Doctors in the certificates was in conflict with the disease mentioned by the applicant in the application. Finally it was urged that his services terminated on account of his having vacated the post otherwise the Bank had no motive to go against him and the allegation of his enmity with the Manager Bahraich branch had no bearing on the facts of the case.

Now the ultimate analysis of the facts given in the deposition of the applicant as well as detailed in the written statement of the Bank boils down to this that the applicant fell ill in October 1948 and applied for one month's leave in the first instance. This application was supported by two Medical Certificates one by the Civil Surgeon and the other by Doctor Behari Lal M.B., B.S. That leave was granted to him. Subsequently he asked for extension of one month and this time also the application was supported by the Medical Certificate of the Civil Surgeon. One more extension was also granted but at the fourth time in February 1949 when he applied for extension he could not attach the certificate of the Civil Surgeon. The application however was duly supported by Doctor Behari Lal. This sequence of event clearly shows that the employee was very ill. It is also in evidence that when he applied for leave in April 1949 the Bank informed him that Bahraich Branch was closed and he was transferred to Hazratganj whereupon he made a request for his transfer to Gonda which is nearer to his home place instead of Hazratganj as he was still ill. The Bank, however, insisted on his joining at Hazratganj whereupon the applicant asked for more leave. At this stage the matter took controversial turn. The applicant's case is that he was in a state of convalescence and could not join Hazratganj while the Bank insisted and refused to grant him any leave. The other aspect of the case was that some letters were sent by the Bank insisting for the Civil Surgeon's certificate which were returned undelivered by the postman. The applicant's position in this respect is that those letters were designedly not delivered to him on account of his enmity with the Manager of Bahraich branch through whom all this correspondence was going on. The remarks of the postman on these letters are to the effect that the whereabouts of the addressee are not available, or the addressee was out of station and once it was stated that he had gone to Lucknow. The legal presumption is

no doubt attached with these non-delivery remarks made by the postman but when read with other evidence and considered in the light of all circumstances it does not stand to reason that why the applicant was avoiding to take delivery of these letters when he was otherwise approaching the Bank authority to send him to Gonda instead of Hazratganj and that actually he was not yet fit. A good deal of documentary evidence was produced from both sides but without referring to all those documents which did not constitute any material evidence the one communication dated 2nd June 1949 sent by the District Manager to Shri J. N. Srivastava under registered cover throws good deal of light on the matter in question. In this communication the District Manager informed the applicant that he was on leave for about six months and as such the Bank authority would consider him unfit for Bank's service. He was thereby called upon to undergo Medical Examination for the purpose of fitness. This manifestly indicates that the subject was really ill and was not avoiding duty and the Bank rather wanted him to produce the certificate of fitness. Judged from this stand point I am of the considered opinion that the Bank was not justified in refusing leave without pay and the plea advanced by the Bank that he had vacated the post falls to the ground. Exhibit 3—a communication dated 7th July 1949 further reveals that the applicant again applied for leave whereupon he was informed that since he was on leave for a pretty long time and did not submit Medical Certificate from a Civil Surgeon as instructed in letter of 2nd June 1949 it was regretted that he could not be allowed to continue in the service of the Bank and will be considered to have vacated his appointment. This piece of information when considered with the fact that the applicant was still asking for leave which could be granted without pay bespeaks that Bank had no sympathy with an old employee who was ailing but rather wanted to get rid of him. The employer may have his own reasons to get upset in the matter of long leave but if this method of terminating the services be allowed the security of service and the claim of the old employees on the score of their long service would become meaningless. I would, therefore, allow this claim and direct the Bank to take him back in service as well as to pay him six month's salary plus all allowances admissible as compensation for the intervening period of suspense and unjustifiable discharge from service within one month from the date when the award becomes operative.

(4) *Ram Vehari Mehrotra*.—He joined the Bank's service on 23rd June 1943 and by dint of his labour and good work rose to the rank of Officer-in-charge and was posted to Lucknow Chowk branch pay office. It so happened that he made a claim for the implementation of the terms of the Conciliation Board award in his case regarding Increment in pay and grade. The Bank management, however, instead of giving him the relief sought, charge-sheeted him with certain accusations and he was called upon to submit his explanation, *vide* charge-sheet dated 29th August 1949 (Ex. A). The accusations embodied in the charge-sheet (Ex. A) were replied by the explanation dated 24th September 1949 (Ex. B). It was argued that the charge relating to certain advances was misleading inasmuch as the advances referred to were very old i.e. for the year 1944-45. It was argued that the intention of the management was to do away with his claim which he had made and these accusations were levelled against him as a counterblast. It was further argued that some of the charges levelled against him relate to acts committed after he left that branch and that no enquiry was made into the matter and his services were terminated on 19th October 1949 arbitrarily. It was also submitted that the All-India Industrial Tribunal (Bank Disputes) was functioning in those days but no permission was obtained for the discharge of the employee and as such the order was bad in law as well. Finally it was also urged that the returns were duly submitted regarding the advances which were made on verbal instructions periodically (monthly, half yearly and quarterly) and no exception was taken but when he preferred a claim for certain benefits which accrued to him under the award instead of appreciating his services, he was charge-sheeted and shunted off from the service on the ground that the advances made by him were unauthorised and proved detrimental to the interest of the Bank. Relief sought for was for reinstatement any payment of arrears for the intervening period and other benefits.

Shri Bhatnagar, the Bank representative, in reply explained the procedure regarding the advances and in this connection emphasised that even if any verbal instructions are issued for the purpose of making an advance the same are ratified in writing soon after and according to the procedure laid down it was too much to say advances could be made merely on verbal instruction. On merits it was submitted that the advances made by Shri Mehrotra were unauthorised but no action was taken because it was thought that adjustments will be made in due course. Ultimately when the accounts were not adjusted the Bank had to take exception and he had to be charge-sheeted. It was strenuously contended

that the advances made by the subject were unauthorised as evidenced from his own letter dated 20th October 1948 (Ex. 2) and that these unauthorised advances could not be finally adjusted and Shri Mehrotra was liable to removal but the head office took a lenient view and asked him to try for the adjustment. Reference was made to another letter (Ex. 3) wherin the applicant assured that the advances made by him will not remain unadjusted. The Bank representative on the strength of this documentary evidence maintained that sufficient time was given but as he failed and caused loss to the Bank, the Bank had to charge-sheet him.

Now on facts the point for determination is as to whether the applicant had committed gross misconduct as to warrant the penalty of dismissal. In this connection the facts and the circumstances under which unauthorised advances were made have been fully set out above in the arguments of both sides and on examination the case in nutshell is that the applicant despite head office instructions to the contrary continued making advances for which he was duly charge-sheeted and was given an opportunity for explanation which was not found satisfactory by the management. Exhibit 2—a communication dated 20th October 1948 sent by the applicant to the Managing Director regarding advances could very well be treated as the correct exposition of the procedure adopted in the matter of advance. In this communication Shri Mehrotra admitted in so many words that what he had done was in contravention of Head Office circular No. 119/48, dated 24th May 1948 but that was done in good faith and that he was sorry for the action. In the light of this admission it was a different matter that the management might have considered his case sympathetically by condoning his repeated acts of omission and commission in the matter of unauthorised advances causing loss to the Bank; but it is too much to expect from an adjudicator to reverse the decision arrived at by the management on due enquiry when the offence was admitted. In the result the claim fails and is dismissed.

(5) *R. K. Rastogi*.—His grievance relates to a fraud alleged to have been committed by one of the clerks of Hazratganj Branch. He was suspended from service and was charge-sheeted to show cause as to why his services be not dispensed with. His explanation dated 23rd March 1950 was not found satisfactory with the result that he was discharged with effect from 10th March 1950. It was argued on his behalf that Shri Rastogi was not connected with the alleged fraud and in this connection reliance was placed on documentary evidence comprising of Exhibits A and B which relate to his general character and honest dealings in the course of his service. It was further argued that the police in the course of investigation had shown him as a prosecution witness and did not treat him as an accused. Lastly it was submitted that the real culprit connected with the fraud was at large and the action taken against Shri Rastogi was not tenable.

The claim was resisted by the Bank and Shri Bhatnagar on their behalf argued that Shri Rastogi was working as an Accountant when a certain questionable account was allowed to be opened as current account through Shri N. L. Mehrotra who was on that day incharge of the Current Account Department. Several fraudulent and false entries were made in connection with this account and when the fraud was detected it was disclosed that the Bank was likely to suffer great loss. It was stressed that Shri Rastogi also remained in charge of the Current Account Department at intervals and during this period these fraudulent entries were also made. He was duly charge-sheeted and was given an opportunity to explain but in his lengthy explanation the main plea advanced by him was that there was shortage of staff and he could not manage to scrutinise everything and that his signatures were forged at various places. This explanation, the Bank representative insisted was not acceptable and the Bank had to terminate his services. Reference was also made to a previous case relating to A. R. Dey and others of similar type decided by their lordships of the All-India Industrial Tribunal (Bank Disputes).

Now so far the evidence goes this is correct that there is no direct evidence to connect Shri Rastogi with the fraud; but even in his own explanation it was not denied that he was working as an Accountant and remained incharge of the Department on more than one occasion. In Banking business ultra care and circumspection are necessary parts of duty and plea that one was not capable of scrutinising certain papers if accepted would really create a situation whereby all sort of frauds and embezzlements which by the very nature of offence required time for detection would fail even in departmental matters. I can well understand that in a criminal trial the charge is to be established to the hilt by direct evidence or by such overwhelming circumstantial evidence on the hypothesis which would prove that the committal of offence is incompatible with the innocence. This standard of proof by any stretch of reasoning cannot be admitted in departmental enquiries. Grave suspicion or even gross negligence which could cause losses to

the institution to my mind would be sufficient for meeting departmental punishment. Judged on the above principle I am of the opinion that the Bank was justified in terminating the services of Shri Rastogi and it was futile to urge on his behalf that as the police investigation is still going on no departmental action could be taken against him. In the result the claim fails and is dismissed.

(6) *Jagdish Vehari Mehrotra*.—The facts in his case are almost identical as explained in the case of Shri R. K. Rastogi (at No. 5 above) and it was stated that this case also relates to the fraud perpetrated upon the Bank; when Shri Rastogi was a Current Accountant and Shri Mehrotra was a clerk. In this case it was further argued that as a clerk he was much less responsible for the fraud if at all it occurred because the Ledger keeper and the Accountant and the persons above them had to scrutinise the matter and his duty was only of passing.

Shri Bhatnagar in reply stated that this was wrong to say that Shri Mehrotra was only responsible for passing and was not dealing with the entries. He was incharge of the ledger in which these entries were posted and it was his duty to bring it to the notice of the incharge and the Agent that these forged entries were made without his knowledge. It was further urged that the entries were made by Shri Sharma in connivance with the ledger keeper and as such both were equally responsible for the fictitious nature of the entries and were liable for the fraud.

This employee was incharge of the ledger in which the entries were posted in regard to the fraud perpetrated on the Bank discussed in the case of Shri R. K. Rastogi above. The main argument advanced on his behalf was that he was handling one of the ledgers and the other was being handled by Shri Sharma who is alleged to be the chief culprit. For the reason given in the previous case which need not be repeated once again I do not think that it is a fit case for interference. The same is disallowed.

(7) *Ramesh Chandra Raizada*.—This application was filed by the applicant in his individual capacity and the same was withdrawn by Exhibit 1 wherein it was stated that he had already got employment in Reserve Bank of India, Madras, and did not like to press this claim. The same is filed.

(8) *Benarsi Dass*.—He joined this Bank in the capacity of Officer-in-charge in August 1945 at Meerut Cantt branch. The management, however, designated him as Sub-Agent without his asking and he continued working but in point of fact he always thought himself as Officer-in-charge and not Sub-Agent. The other point made out by him was that one Shri Kunj Behari Mehro who was the relation of the Manager of the Head Office Shri V. S. Mehrotra was to be accommodated and he was sent away to Muzaffarnagar and the office at Muzaffarnagar was soon after closed with the result that he was shunted off from employment. He is still out of employment and wants reinstatement.

Shri Bhatnagar raised the preliminary objection that Shri Benarsi Dass was a Sub-Agent and does not satisfy the definition of workman as laid down under Section 2(s) of the Act. It was further stated that this was incorrect to say that he was made Sub-Agent against his wishes and only for the sake of terminating his services, as he was made a Sub-Agent much earlier than the closure of Muzaffarnagar branch. In respect of the preliminary objection, reliance was placed on the Conciliation Board award (para. 13-T—page 12) wherein it was held that a Sub-Agent was an officer and did not satisfy the definition of workman.

Shri Benarsi Dass admittedly worked as Sub-Agent and it was idle to urge that although he was designated as Sub-Agent yet he was not doing that work. In the light of the finding given in the Delhi Bank disputes award he was an officer and his case does not fall within the definition of workman. The same is dismissed on this legal ground.

(9) *Staya Prakash Singhal*.—The grievance of this employee was two fold: (1) for the payment of arrears, and (2) for reinstatement because he was discharged without obtaining the necessary permission from the Tribunal. In regard to the first it was stated that his basic salary was Rs. 120 and he was entitled to get a special allowance of Rs. 25 for having passed the Banking examination. The Bank, however, withheld that increment and only granted Rs. 6. The relief sought for was for the payment of Rs. 25 as special allowance with effect from 1st July 1947. Regarding his grievance of discharge from service, it was submitted that the charge levelled against him for making unauthorised advances was not tenable because the same were made in good faith in the interest of the Bank business.

The Bank representative replying to the first point urged that the claim for the payment of arrears was made after a good deal of delay when objection was taken in regard to unauthorised advances made by Shri Singhal. It was further argued that the Conciliation Board award came in force in 1949 and his claim related to 1947. The Bank, however, paid him Rs. 57 in satisfaction of his claim and that the claim made was without merit. Regarding his other grievance reference was made to the charge sheet (Ex. C) and the explanation of the employee (Ex. 1) and it was argued that in the last paragraph of his explanation Shri Singhal admitted his mistakes and regretted for the inconvenience caused to the management for those mistakes. Some more evidence in the form of Exhibits 2 to 7 was also adduced in support of the argument and it was emphasised that the advances made by Shri Singhal were wholly unauthorised in the light of the circulars issued by the head office and the hackneyed argument advanced by him namely that whatever was done, was done in the interest of the Bank could not be availed of after having put the Bank to loss.

In order to appreciate the evidence I have looked into the lengthy explanation of Shri Singhal (Ex. 1) wherein he has dealt with the advances; but his main defence appears to be that he had always taken keen interest in realising Bank's disputed advances and the gravamen of the charge *viz.* that he has made unauthorised advances in defiance of the head office instruction was not denied. The position in the matter of these advances on going through the record boils down to this that advances cannot be made beyond a certain amount without the previous permission of the Head office but on occasions in order to meet the demand of reliable constituents to secure more work such advances are made in anticipation of permission. The advances in this case technically were unauthorised and the sole question for determination is as to whether the employee was acting dishonestly or only ignored certain instructions in order to secure more work in Bank's interest.

Now regarding first part of the claim the cause of action arose in 1947 and is beyond the jurisdiction of this Tribunal. Regarding the other claim, on the appreciation of all these facts and circumstances, it is difficult to hold that the employee took good care in the matter of advances, because when the time of adjustment came, the money was not realized and the Bank was put to loss. There is yet another aspect of the question *viz.* that when objection was taken by the Head Office on the periodical statement regarding these advances the same was ignored and ultimately the Bank had to give him charge-sheet and called upon him to submit his explanation. A copy of the charge sheet placed on the record (Ex. C) furthermore throws lurid light on the conduct of the employee who has sought to meet the case on the plea that whatever he did, he did in the good faith and in the interest of the Bank. The charge-sheet reveals that the unauthorised advances made by him started in August 1948 and although he was once called at the Head Office to explain his conduct and give an assurance that he would not make any unauthorised advances in future, he still continued making unauthorised advances and even failed to submit regular returns. This clearly indicates that the man was rather a habitual offender and it would not be wrong to infer from his repeated conduct that he invited such drastic action of dismissal from services on the score of gross misconduct. The result accordingly is that the claim fails and is disallowed.

(10) *Shyam Sundar Lal*.—He was employed in 1945 and his services were terminated in 1950 on the ground of old age and unsatisfactory work without affording an opportunity of submitting his explanation or obtaining the necessary permission of the Tribunal under Section 33. In support of the claim a letter, dated 5th April 1950 (Ex. A) and certificates B, C, D and E were produced and photographic copy of letter, dated 19th July 1950 (Ex. F) were produced. Reliance was also placed on a decision made in the case of P. M. Deolasi (Madhya Pradesh Bank disputes award of this Tribunal) and the case of V. N. Nimbalkar (Bombay Bank disputes award).

Shri Bhatnagar in reply submitted that the certificates produced relate to the years 1946 and 1947 which should not have been issued as the officers were authorised to do so and may not be considered. It was further argued that the employee joined the Bank's service in 1945 and at the time of discharge he had attained age of superannuation and to retire under the bye-laws.

This is a case of superannuation and the only plea urged on behalf of the employee was that he was fit enough to go on with the work and furthermore that his work was satisfactory. I am afraid this plea is of no avail and extension under the bye-laws was at the discretion of the employer which was exercised against him. The claim fails and is disallowed.

(11) *Chhotey Lal* (Peon).—He was appointed on the 17th June 1949 but was not confirmed as required by U.P. Conciliation Board award after 6 months His

services were terminated in April 1950 without having obtained the prior permission of the Tribunal on the ground that he was a temporary hand. It was argued that he was given uniform and all other amenities and concessions permissible under rules and as such he could not be dubbed as a temporary hand. Relief sought was for reinstatement with payment of the intervening period. No-evidence was adduced in support of the claim.

Shri Bhatnagar in reply submitted that the Peon was appointed in a temporary place when the first incumbent had gone on leave on temporary basis. It so happened that the first man did not turn up and he continued for some time. Reliance was placed on the salary bills for the months of October, November and December (Exhibits 1, 2 and 3) and on the strength of this evidence it was maintained that the salary given to the Peon was at the rate of Rs. 1/5/- per day and as such he was on daily wage basis and not a regular employee.

The facts amply prove that he was not only a temporary hand but was put on daily wages as evidenced from the salary bills (Exhibits 1, 2 and 3). There is no substance in the claim and the same is dismissed.

(12) *Application of the U.P. Bank Employees Union, Muzaffarnagar, regarding closure of Muzaffarnagar branch and thereby terminating the services of: (1) J. P. Mittal, (2) Uma Charan Dass, (3) Bimal Prasad Jain, (4) Babu Ram and (5) Puran Chand.*—An application was filed by the U.P. Bank Employees Union, Muzaffarnagar, concerning Shri J. P. Mittal and four others mentioned above and it was alleged that they were old employees of the Bank but their services were terminated on the closure of Muzaffarnagar branch without having obtained the prior permission of the Tribunal and that the discharge was not warranted by facts and law. Shri Kakkar arguing on their behalf strenuously contended that the employer not only infringed the statutory provisions of Section 33 but furthermore attracted the penalty under Section 23 of the Act as the closure of a branch and the consequent discharge of a large number of employees was tantamount to lock-out. Reliance was placed on a decision published in the Labour Law Journal of September 1950 at page 963 wherein the Adjudicator had made pertinent observations regarding this question. Lastly it was also argued that the principle of last come first go was not applied and in the case of closure of branches the Tribunal should take serious action as contemplated under Sections 23 and 33.

Shri Bhatnagar in reply submitted that the closure of Muzaffarnagar branch was the outcome of economic policy adopted by the Bank as the branch was running at a loss and the Bank could not afford to continue the business there. It was further argued that the employees were given notice of one month and they reconciled their lot and some of them withdrew their Provident Fund and as such they had waived the right of asking for reinstatement. In regard to the permission it was argued that the same was not necessary and the merits of the case do not attract the penalty of Section 23 as the action was taken in good faith to rehabilitate the position. It was also stated that since the closure, the Bank has not opened any new branch which would show that the Bank was not in a position to start any new branch.

Now all these 5 employees were admittedly old employees who joined the Bank's service somewhere in 1945 and 1946. They were served no doubt with one month's notice to the effect that their services would come to end from 15th August 1949 from which date the branch ceased to function. Both sides did not adduce any evidence and on the appreciation of the facts given in pleadings or in the course of arguments, this will be taken for granted that the closure of the branch was not the result of any bad labour practice. But this by itself does not go to show that the closure was justified or that the services of the staff working there could be dispensed with on payment of one month's salary. Hindusthan Commercial Bank stands on a different footing as compared with Bharat Bank which has closed a large number of branches and has exhausted its capacity for absorption. In the case of this Bank the question crops up for serious consideration as to whether these employees could not possibly be absorbed in service when the Bank was functioning with its branches all over India. Now the Union has not adduced any evidence that the closure of this branch was due to any ulterior motive or that there was sufficient work in the branch and the closure was unjustified. In the absence of any such evidence the case is to be considered on the premises that the branch was closed on account of shrinkage of work although the Bank also failed to bring any data on the record. It was only urged by the Union side that the closure of the branch and the termination of services of 5 employees amounted to lockout and the employer was rather liable for the penalty laid down under Section 23. Reliance was placed on a decision given in the case of Presidency Jute Mill (published in the Labour Law Journal 1950 at page 961). The learned Adjudicator in that case observed that discharge by way of retrenchment amounts to a lockout in accordance with the definition of existing Industrial Disputes Act inasmuch as it

amounts to a refusal to continue to work to the employees concerned. This finding appears to have been arrived at on the particular facts of that case and if it was sought to lay down the general proposition I have no hesitation in dissenting from it. In the matter of closure of branches no hard and fast rule can be laid down for the simple reason that no employer could possibly afford to continue functioning of a branch notwithstanding recurring losses and with no prospect for improvement in the business. The real question of course which falls for consideration would be that the necessary permission for closure be obtained and a case be made out by producing evidence and statistical figures to establish the case of closure. The point can be considered from other aspects also but I have no mind to elaborate it in this reference which deals with innumerable cases. The ultimate analysis in this case comes to the point that no permission was asked for much less obtained and it was argued by the Bank representative that it is not necessary in the case of retrenchment. This question has already been considered at some length in the case of Shri Prem Kishore Sharma (of Bharat Bank) in this award and in the light of that finding permission under Section 33 was necessary. Now, the only other question for determination would be as to whether the relief sought for reinstatement be allowed or on the analogy of Bharat Bank the employees should be held entitled to only retrenchment relief as compensation. On careful consideration of all the facts and circumstances I am of the opinion that it would be rather doing injustice to this Bank to bracket it with Bharat with the result that this case cannot be disposed of sheer by granting retrenchment relief and the real relief *viz.* reinstatement is amply called for. I would, therefore, direct the Bank to take back all these five employees into their services and make honest effort to absorb them in their service in other branches as well and to pay them six months salary plus allowances permissible under rules prior to reinstatement. This direction shall be carried out within one month when the award becomes operative.

(13) *Kanhaiya Lal Kapoor*.—The facts of the case are fully set out in three typed pages application and need not be recapitulated. The grievance of the employee put shortly is that he was an old employee and his services were terminated unjustifiably without any good reason. The relief sought was for reinstatement and payment of salary for the intervening period. In support of the allegations that he was a workman and his dismissal was wrongful, reliance was placed on 10 letters (Exhibits A, B, C, D, E, F, G, H, J and K). Reference was also made to the order of discharge Ex. L attached with the application. It was further argued that although the reason given in Ex. L (order of discharge) was to the effect that his services were no longer required, now in the written statement specific allegations have been made against the applicant that he was responsible for the failure of the Bank's case in court and did not attend to his duties as the Officer-in-charge of Jhansi branch. It was stressed that these pleas now taken in the written statement are an after-thought. It was also argued that a certificate was issued to the subject, dated 7th July 1950 (Ex. M) and if he had been dishonest he should not have been given that certificate. Finally, it was submitted that no permission of the Tribunal was obtained before the discharge nor he was given any opportunity to submit his explanation.

Shri Bhatnagar in reply raised a preliminary objection that the applicant does not satisfy the definition of workman as he was a Sub-Agent and as such was an officer. It was further argued that although he may have been acting but for all purposes he was a Sub-Agent.

On merits it was contended from the Bank's side that some remarks were made against Shri Kapoor by the District Judge in his judgment dated 23rd March 1950 and the management accordingly on the basis of those remarks charged him and he was given an opportunity to submit his explanation. It was argued that the Bank lost the case even in the High Court on account of these remarks against their own employee which amounted to misconduct for which his services were terminated. A copy of the judgment of the District Judge referred to above was brought on the record (Ex. 2) and some other documents were also produced but in the light of the conclusion that I am going to arrive at *viz.* that Shri Kapoor was working as Sub-Agent and as such was an officer and does not satisfy the definition of workman; his case on merits need not be probed further. In regard to the legal objection it was argued on behalf of Shri Kapoor that although he was working as Sub-Agent yet he was not independent as he was working under the supervision of the Agent and that he worked only temporarily for some period. On the perusal of the record I however find that Shri Kapoor in the statement of his claim has himself stated that it was in April 1947 that he was elevated to the post of Sub-Agent and that he was sent Jhansi which branch was then a non-paying one and he made it a paying branch during his stay. Subsequently, he worked as Sub-Agent at more than one places

in the years 1948 and 1949 *viz.* Muzaffarnagar, Jodhpur and then at Allahabad—Exhibit H filed on his behalf by the Union representative further clinches the matter beyond any manner of doubt that when he was relieved he was an acting Sub-Agent which post has already been held as one of officer in the Delhi Bank disputes award of this Tribunal. There is nothing escape from this hard fact that he remained incharge of several branches and that at the time of the termination of his services he was also incharge of a Sub-Branch although acting when he was relieved by Shri A. N. Mukherjee. The words used in the change of charge form were "handed over charge of branch". The claim fails for want of jurisdiction and it is disallowed.

(14) *Madan Gopal Kapoor.*—His case is that he joined the Bank's service in 1943 and put in no less than 6 years service. He was working satisfactorily but his services were terminated on 4th November 1949 without any charge framed against him and without obtaining the prior permission of the Tribunal. Replying to the preliminary objection that he was not a workman it was argued that Sub-Agents and Sub-Managers are designated as such in the Hindusthan Commercial Bank but virtually they work as Assistant Managers under the guidance of the Agent. It was stressed that the applicant should not be taken as a Sub-Agent because he was working in the Head Office at Kanpur and had no independent charge or controlling authority to dignify him as an officer. Regarding his discharge from service reliance was placed on the discharge order dated 4th November 1949 (Ex. A) and a letter dated 4th November 1949 whereby charge was made over to the Accountant (Ex. B).

Shri Bhatnagar stressing on the preliminary objection submitted that the applicant was not a workman and in this connection referred to page 6 of the application wherein the applicant himself has stated that he remained in-charge of Gorakhpur branch for about 3 years and thereafter at Hazratganj branch and when he joined this Bank he was a Sub-Agent of Central Bank. It was maintained that he was a Sub-Agent by his own admission as stated by him in the application. Reliance was placed on the finding given in the case of Shri S. N. Nanda of this Bank. Reliance was also placed on the Conciliation Board award paragraph 13 (page 12).

The employee by his own admission worked as Sub-Agent at several branches and at the time of the termination of his services he was also designated and working as Sub-Agent. His case accordingly is not triable for want of jurisdiction as held previously with the result that the claim is rejected.

(15) *S. B. Mathur.*—His grievance is that the increment of Rs. 7 fell due to him in January 1948 but he was given only Rs. 4 as increment, in terms of B. B. Singh's award. It contended that according to the aforesaid award those employees who enjoyed higher emoluments than the minimum fixed in the award were allowed to continue to get the same. It was maintained that the Bank was not justified in reducing the amount of increment. It was further argued that in the clarification made by the Conciliation Board award the authorities were required to give their employees increments in their old scale in cases where they were drawing higher than the minimum fixed by B. B. Singh. The relief sought was for the release of increment by allowing him the difference as specified in para. 9 of the application.

Shri Bhatnagar opposed the application for the grant of increment on the basis of old scale and grade and referred to the cases of Shri Guha, Agnihotri and Kannan decided by the All India Industrial Tribunal (Bank Disputes) (published in the Gazette of India dated 26th August 1950—page 480). It was submitted that the arguments advanced in those cases be treated as arguments in these cases. Letter of the Regional Labour Commissioner (Ex. 1) dated 17/18th October 1949 was produced in support of the contention and it was argued that the Labour Commissioner also agreed to that the point of view in the matter of increment.

The point under discussion is covered by the Regional Labour Commissioner's letter dated 17th October 1949 (Ex. 1) the operative part of which reads as follows:

"I am to confirm my decision that the employees had a right to elect up to June, 18, 1949, the Bank Grade or the Award Grade and if they had expressed their option to choose either of them, it should have been allowed to them."

Now the Bank complied with the instructions given in this order and as such the claim becomes devoid of any substance. The same stands dismissed.

(16) *Ganga Narain Mehrotra*.—The main point urged in this case was that although he was designated Sub-Agent yet he was a workman and satisfied the definition laid down under Section 2(s) of the Act. On merits it was alleged that his services were terminated without assigning any good reason. The relief sought was specified in the last para. (a) to (g). In evidence reliance was placed on the order of discharge dated 8th December 1949 (Ex. A), copy of letter dated 9th February 1949 (Ex. B) and copy of letter dated 30th November 1949 from the Inspector of Branches of the Bank to the Labour Commissioner (Ex. C). It was further argued that his discharge was traceable to the prejudice and malice of the management because he was reinstated by the U.P. Government sometime earlier which was not liked by the management. In support of this allegation a copy of letter dated 4th August 1949 regarding transfer to Gorakhpur was also produced in evidence (Ex. D) and another letter dated 11th August 1949 (Ex. E).

Shri Bhatnagar, Bank representative, resisted the claim mostly on legal objection that the employee was not a workman and the case was not triable by this Tribunal.

Shri Mehrotra admittedly worked as Sub-Agent and was incharge of a Sub-branch. His case accordingly fails on the legal objection without going into the merits of the case which relate to a certain charge levelled against him in regard to his integrity and fidelity in service. It may, however, be pointed out that he was once discharged from service and was reinstated under the orders of the U.P. Government and on merits the question is problematic as to whether this time he became a victim of prejudice against him. The case at any rate is beyond the jurisdiction of the Tribunal and fails on that account.

(17) *Mahendra Pratap Singh and Others*.—This application was preferred by the Secretary U.P. Bank Employees Union relating to Shri Mahendra Pratap Singh and some others whose names were not specified in the application. The relief sought was that the Bank be instructed to restore the awarded rate of contribution by the All India Industrial Tribunal (Bank Disputes) and that the employees be allowed to contribute at the rate of 9·3/8% to their Provident Fund. It was argued that the change in the conditions of rate was a violation of Section 33 and as such the order was illegal.

Shri Bhatnagar, Bank representative, raised a preliminary objection that Shri M. P. Singh whose case was argued was an officer as he was working as Sub-Agent and furthermore he entered service under agreement as per copy produced and was discharged on the expiry of the period.

Now the agreement relied upon by the Bank is silent with regard to the designation and in the absence of any other evidence that Shri M. P. Singh was working as Sub-Agent it is difficult to hold that he was an officer.

Shri Sekhri, Union representative, replying to the legal objection also denied the fact that Shri M. P. Singh worked as a Sub-Agent and averred that the post held by him at the time of making the claim was of Assistant Accountant and his salary was less than Rs. 500. Regarding others, whose names were not given it was stated that they were Accountant and Assistant Accountants and could not be treated as officers as held in Delhi Bank disputes award of this Tribunal. The legal objection is accordingly repelled. On merits however the relief sought for is for an increase in the rates of contribution of Provident Fund, which item was not mentioned in the Schedule attached with the Reference and was thus beyond the scope of the Reference. The claim, therefore, fails for want of jurisdiction and is rejected.

(18) *Durga (Peon)*.—His grievance are embodied in two separate applications: one relates to the non-payment of dues for 46 days and the other against the order of discharge. Shri Sekhri arguing on his behalf stated that so far the first application was concerned the facts are that he was transferred to Muraripur office on 7th October 1949 wherupon he moved the Regional Labour Commissioner through Kanpur Union, who cancelled the transfer order and the Bank was asked to pay him the salary for the intervening period of 46 days. The Bank, however, did not pay him his dues. Hence the claim. The letter, dated 26th May 1950, from the Regional Labour Commissioner was produced in evidence (Ex. A).

Regarding the other grievance viz. that of discharge it was argued that his services were terminated on 30th November 1950 giving him three months salary on the plea that he had become surplus to the requirements of the said Bank. Lastly it was submitted that the order of discharge was illegal as no permission was obtained under Section 33 of the Act.

Shri Bhatnagar, the Bank representative, replying to the first complaint raised the preliminary objection that the relief sought for does not fall within the scope of the Reference and was beyond the jurisdiction of the Tribunal. On merits it was stated that he had no leave due to his credit and as such the Bank was not bound to pay the salary for 46 days. In regard to the Regional Labour Commissioner's order it was argued that the same was not binding upon the Bank because the order was unjust. Regarding the other complaint Shri Bhatnagar submitted that he had become surplus to the requirements of the Bank and the directions laid down in the All India Industrial Tribunal (Bank Disputes) award in para. 322(7) were complied with by giving him three months salary and in these circumstances no permission under Section 33 was necessary.

Shri Sekhri in reply to the preliminary objection (that the first complaint did not fall within the scope of the Reference) referred to the note given underneath the Schedule "that the list is not exhaustive". Replying to the contention raised by the Bank representative that the discharge was governed under the directions embodied in para. 322(7) of the All India Industrial Tribunal (Bank Disputes), Shri Sekhri controverted the argument and relied upon this Tribunal's observations and finding given in Bombay award in the case of Haider Ali Maherli Kerawala (of Habib Bank).

Now in regard to the claim for the payment of salary for 46 days Regional Labour Commissioner's order was clearly binding on the Bank and it must succeed on this short ground. The other grievance regarding discharge from service however raises a legal issue viz. as to whether the Bank was within its right to terminate his services according to the directions laid down by the All India Industrial Tribunal (Bank Disputes), Bombay, in para. 322(7) of their award. This award has since been declared invalid on technical ground but the findings given therein only serve as good argument. The directions laid down in Clause (c) paragraph 322 moreover relate to the closing down of a branch or retrenchment of more than 5 persons. A solitary case of one employee does not fall within the ambit of these directions and as such the stand taken by the Bank is untenable. Durga, Peon, joined the Bank's service in 1944 and was discharged on 30th November 1950. He was a permanent employee and had put in about 6 years' service and even if 3 months' salary paid to him be considered as compensation in the matter of retrenchment the amount was obviously inadequate. The discharge order furthermore was passed after the enforcement of amended Act of 1950 and prior permission under Section 33 was necessary. Now the relief asked for in the column of prayer is for reinstatement as well as for the payment of back salary for the intervening period and in the light of the finding that the order of discharge was not legal I have no alternative but to allow the claim and direct the Bank to take him back in service as well as to pay the back salary plus allowances admissible for a period of six months prior to reinstatement. This order will be carried out within one month when the award becomes operative.

(19) *Mahendra Pratap Singh*.—His case was considered along with others in a previous claim and this separate application relates to the alleged reduction of Dearness Allowance and the stopping of Interim relief. The argument advanced on his behalf was that this reduction was made without consulting the other side and brought a change in the conditions of service violating the provisions of Section 33 of the Act. The relief sought was for the restoration of the benefit.

The Bank representative raised a preliminary objection that the applicant was an officer in terms of the agreement, a copy of which was produced and it was further submitted that reduction in Dearness Allowance became necessary in terms of Shri B. B. Singh's award.

Now according to the B. B. Singh award Dearness Allowance at the rate of 30 per cent. was allowed to those who were drawing a salary up to Rs. 167. This employee was also drawing lesser salary but subsequently an increment of Rs. 15 was made under the terms of the agreement whereby his salary was raised beyond Rs. 167 with the result that the consequent reduction was made in the Dearness Allowance. The position taken up by the Bank does not violate the terms of Shri B. B. Singh award upon which reliance was placed by the employee and as such the claim fails on facts. The preliminary objection also fails because in terms of the agreement referred to by the Bank representative Shri M. P. Singh was taken as an apprentice for training under this agreement and not as an officer. The application is accordingly rejected.

(20) *Non-Payment of Overtime to the Supervisory Staff of Kanpur Main Office*.—The grievance made in general was to the effect that extra work was being taken from Supervisory Staff. It was alleged *inter alia* that the matter was

referred to Conciliation Officer on 7th February 1950 but subsequently this Tribunal was moved and if necessary the relative file of the Conciliation Officer be sent for. A copy of the letter of Conciliation Officer, dated 25th March 1950 (Ex. A), was produced in evidence and it was submitted that the subject matter of this letter has full bearing on the facts of the case whereby overtime allowance was directed to be paid by the Conciliation Officer. It was further argued that the timings were already fixed in Shri B. B. Singh award and the employees were not to sit beyond that time and in case they were made to sit they should have been paid overtime allowance.

The one preliminary objection raised by the Bank's side was that the specific application was not made by the persons concerned and the question could not be considered in general in regard to the payment of overtime allowance. Reliance was placed on the decision made in the case of R. B. S. Jain, Rubber Mill *Vs.* their workmen (reported in Labour Law Journal—April 1951). The other objection was that the employees concerned do not satisfy the definition of 'workman' as they were working on Supervisory Staff. On facts it was submitted that although the Bank had sympathy for those who worked longer period for the preparation of half-yearly accounts, etc., yet the Bank was not prepared to accept the general principle of overtime allowance. It was further stated that on one occasion the Bank paid a sum of Rs. 30 per head for the work done after the duty hours but that payment was made *ex-gratia*. Finally, the application was opposed on the point of principle and it was stressed that the nature of work of the Accountants was such that they must be required some time to work beyond the duty hours in order to prepare the returns and statements and by virtue of their duty they were not entitled to any overtime allowance.

The question posed in the application pertains to an abstract general point and does not fall within the scope of the reference which deals with the specific cases. The application is accordingly rejected.

(21) *Ram Prasad Sharma*.—The main question involved in this application relates to the payment of officiating allowance and for the confirmation of the employee as Head Clerk with retrospective effect from 15th November 1949. The Union representative arguing on his behalf submitted that the applicant had officiated in place of Accountant at Jhansi and subsequently was reverted to the post of a clerk.

Shri Bhatnagar in reply stated that Shri Sharma was only a clerk and officiated sometime as an Accountant but he was not entitled to the salary attached to the post of Accountant. Reliance was placed on the Conciliation Board award wherein it was held that sheer holding the Power of Attorney did not confer any grade or higher emoluments on the employee. It was further argued that he has not specified the period for which he worked as Accountant and the Bank's position was that he never worked and consequently even under the dictates of the Conciliation Board findings *viz.* that those who worked beyond 7 days were entitled to higher emoluments, does not apply in his case.

On the perusal of the record I, however, find that the officiating period was mentioned in the application itself *viz.*, from 15th May 1949 to 6th October 1949. This period obviously is more than three months and in terms of the Conciliation Board finding the applicant appears to be entitled for the payment of the emoluments as an Accountant or to some special allowance for officiating as Accountant. Shri Bhatnagar in the course of arguments admitted that the post of Accountant was abolished and Shri Sharma was discharging all the duties of the Accountant. On the appreciation of all these facts and circumstances the relief of claiming the job of Accountant becomes untenable for the simple reason that that post was abolished and Shri Sharma holding the post of clerk was also entrusted with the duties assigned to the post of Accountant. Accordingly he worked as Clerk *cum* Accountant and in all fairness was entitled to the difference between his pay as a clerk and the pay of the higher grade *i.e.* Accountant. In the result the Bank is directed to make payment of the difference for the aforesaid period within one month from the date of the publication of the award.

(22) *R. C. Kapur*.—The applicant joined the Bank's service in 1944 at Lahore as an Agent of the Branch. On the partition of the country he was sent to Agra and had to run the risk of going to Lahore in the interest of Bank's work. His services however were terminated in November 1949 on the ground that his services were no longer required. He was neither charge-sheeted nor asked to submit any explanation and the discharge was a flagrant violation of the provisions of Section 33. Replying at the same time to the preliminary objection raised by the Bank that he was not a workman, it was submitted that although he worked as Sub-Agent in Agra yet his case was taken up by the Union and under Section 2(k) of

the Act it was an industrial dispute which covers the cases of all the employees whosoever they may be.

Shri Bhatnagar in reply raised the preliminary objection *viz.* Shri Kapur worked as Agent and then Sub-Agent and as such he was an officer. On merits it was submitted that there were accusations against Shri Kapur that he had made unauthorised advances while at Lahore and collected his salary for four months without permission of the head office and consequently the management could terminate his services at the outset but as he was to go to Lahore to give evidence in a case he was allowed to continue and when that work was finished he was relieved of his charge because he was not required any more. It was however admitted that no charge sheet was given to him nor was called upon to submit his written explanation and it was contended that it was not done so out of sympathy because that would have ruined his future.

Now the plea of these accusations was not raised in the written statement nor any mention was made in the order of discharge and as the employee admittedly was not charge-sheeted or given any opportunity for explanation the order of discharge in law was illegal and cannot be sustained but his case fails on legal objection that he was an officer. Shri Kapoor admittedly worked as Agent and Sub-Agent at more than one places and was thus an officer in the light of the finding given in the Delhi State Bank disputes award. His case is beyond the jurisdiction of the Tribunal and the same is disallowed for want of jurisdiction.

(23) *Kunj Behari Mehra*.—His case is that he was an old employee and joined the Bank's service almost at the inception of the Bank but his services came to close in December 1949 on the plea that his services were no longer required. He was neither charge-sheeted nor afforded any opportunity to submit his explanation and the plea that his services were no longer required were also not warranted by facts. Replying to the preliminary objection raised in the written statement on behalf of the Bank that he was working as Sub-Agent at the time of discharge and as such was an officer; it was contended that in the case of Sub-Agents working in the Hindusthan Commercial Bank, they had no controlling and directional powers and were also working under the guidance of some Agent or some superior authority and as such strictly speaking although designated as Sub-Agent they were not incharge of the Branch. It was maintained that the question shall have to be resolved regard being had to the nature of the duties entrusted to them.

Shri Bhatnagar, the Bank representative, pressing the preliminary objection argued that it was wrong to say that Shri Mehra had no directional or controlling powers and in point of fact he was incharge of the Sub-BRANCH. Reference was made to paragraph 1 of the applicant's statement of claim and it was maintained that he himself had admitted in the averments made in the application that he became Sub-Agent by gradual rise in the Bank's service. The point hardly needs any elaboration in the light of the finding given in other cases whereby Sub-Agents have been treated as officers and taken out from the definition of 'workman' in terms of Dehli State Bank disputes award of this Tribunal. I am afraid no exception can be made in this case. Shri Kakkar, Union representative at the close of the case drew my attention to a certain circular issued by the Bank with regard to the powers of the Sub-Agents and the Bank representative was called upon to file a copy of the circular. The same was brought on the record which is dated 22nd February 1947. On the perusal of the circular I find that the same relates to certain instructions under which discretionary powers of the Agents and Sub-Agents for advancing and discounting of clean and documentary bills were held in abeyance and it was further pointed out that any Agent granting advances in contravention of these instructions will render himself liable for strict disciplinary action. These instructions clearly put a check to the powers for making unauthorised advances and does not intrinsically bring Sub-Agents under the control of the Agent as the Union representative sought to argue. Sub-Agent is incharge of a Sub-BRANCH has all powers to that extent as that of an Agent incharge of a branch and this question has already been considered at length in the Delhi State Bank disputes award of this Tribunal when the question as to who is an officer came for discussion before the Tribunal. Reference to the Circular accordingly is of no avail to the Union side and the finding given above stands with the result that the application is disallowed for want of jurisdiction.

(24) *Niranjan Lal Mehrotra*.—This employee Shri Mehrotra was also alleged to have some connection with the fraud case for which Shri R. K. Rastogi and Shri Jagdish Vehari Mehrotra (whose cases have been dealt with in this award) were concerned and Shri Sekhri accordingly submitted that the arguments advanced in the case of aforesaid persons be reproduced in his case. Putting briefly it was argued that this employee worked only for a short period of two months as current account incharge and had a clean career at his back for the last 6 years. He was

suspended sheer on suspicion to have had connection with the fraud case although no specific charge was made against him as borne out by the suspension order, dated 31st January 1950 (Ex. A). The next argument advanced was that the matter was reported to the police and the police did not find anything and he was not arrested.

The Bank representative referred to two specific charges against this employee viz (1) that he opened the current account of the man in whose case the fraud was detected; (2) and that he had checked certain fraudulent entries and he failed to point out that the same were fictitious. It was argued that the fraud went on for some time and the circumstances clearly show that more than one persons were connected with the fraud which resulted in a great loss to the Bank.

Now the only redeeming feature in the case of this employee is that he was a new hand and it was argued on his behalf that he worked for about two months and even if there was a mistake in checking the accounts properly, the penalty of dismissal was much too severe. This argument at best may create an extenuating circumstance but I do not think that this by itself excludes him if he was connected with the fraud and I am afraid the distinction cannot be drawn in his case and that of Shri Rastogi and Shri Mehrotra. The result is that the claim is disallowed.

(25) *Sikandar Lal Puri*.—The substance of the claim is that he was working satisfactorily and was entrusted with the work of Gorakhpur Branch. This branch under his charge showed considerable improvement. He was, however, transferred from that place. It so happened that in November 1949 when he was working at Aminabad (Lucknow) branch, he received information about the sickness of his children and made repeated request for leave in order to go to Gorakhpur to make proper arrangement for treatment. To his great surprise he received a communication that he had been suspended on the charges specified at page 3 of the application and was called upon to explain. The explanation was accordingly submitted as detailed in the application itself and he also personally represented his case to the Inspector of Branches in order to prove his innocence but he was asked to move the higher authorities. His grievance was that he was suspended when he was on leave without any real charge and remained under suspension for no less than three months. It was maintained that the employer wanted to victimise him and compel him to resign but when he did not do so his services were ultimately terminated. The relief sought was for reinstatement. Some documentary evidence was also adduced in support of the allegations and it was submitted that the charges levelled against him cannot be treated so serious as to attract the penalty of dismissal.

The Bank representative raised the preliminary objection that Shri Puri was working at the time of discharge as Sub-Agent and was an officer and as such his case was not triable by this Tribunal. On merits reference was made to certain unauthorised advances made by the applicant in contravention to the instructions of the head office.

The preliminary objection goes to the root of the case and strikes at the jurisdiction of the Tribunal and I do not think that it would be of any use to enter into controversy of charges levelled against the employee. The Union representative admitted that the applicant was incharge of the Sub-Branch and reiterated the same arguments advanced in the previous case (Shri K. B. Mehra—at No. 22). Keeping in view the discussion and the finding given above Shri Puri will have to be treated as an officer and his claim fails for want of jurisdiction.

(26) *Shyamlal Gupta*.—Shri Gupta joined the Bank's service in 1944 as an Accountant and by dint of his labour and loyalty to work was given a chance of Cashier-in-charge of Harpalpur Pay Office and sometime after was promoted from Cashier-in-charge to clerk-in-charge and then to Officer-in-charge by order No. 209/47, dated 21st December 1947. He was given full benefit of Shri B. B. Singh's award but he was reverted as a clerk by order, dated 2nd June 1947. His grievance is that he should be given his old post of Supervisor's grade. It was also alleged that he could not file his claim earlier which related to the year 1947 because his case was lying pending with the Regional Labour Commissioner who in his letter, dated 25th July 1950 (Ex. A), informed him to attend his office as well as in their letter, dated 7th September 1950 (Ex. B).

Shri Bhatnagar in reply raised the preliminary objection that the case relates to 1947 much earlier than 13th June 1949 and does not fall within the scope of the Reference as specified in the Reference as well as the schedule attached therein. It was maintained that this Court has no jurisdiction to try this case in which cause of action arose before 13th June 1949.

The cause of action admittedly arose in 1947 and the plea for the extension of limitation *viz.* that his case remained pending with the Regional Labour Commissioner and he could not file his claim earlier is of no avail. The claim falls on technical ground and is disallowed:

(27) *Udit Narain Bajpai*.—The grievance of the applicant is that he once worked as Sub-Agent and on the close of the Branch of Naini Tal his services were transferred to Head Office at Kanpur and then his services were transferred to Generalganj as clerk which amounted to demotion. It was argued that in view of his good work the demotion was not justifiable and moreover his two increments which fell due in 1947 and 1948 were not granted to him. The relief sought was for his restoration to his old post and for the grant of increment.

Shri Bhatnagar in reply submitted that this was correct that he worked as a Sub-Agent of Naini Tal Branch, but on the closure of that branch and on finalising the account of that Branch he was transferred to Head Office. The increments which fell due in 1947 and 1948 were not given to him because his work was not satisfactory and that the Bank was justified in taking into consideration the work of the employee when the increment was to be given. It was further stated that the increments relate to the years 1947 and 1948 and are thus outside the scope of the Reference. On the other question *viz.* one of alleged demotion, it was argued that from Head Office he was transferred to Generalganj office where a vacancy occurred as Accountant and he is working there and no demotion has been caused because no change in his emoluments has been made. He had moreover on some occasions officiated as Sub-Agent only. It was maintained that as such there was no case of demotion.

In view of the fact that no change in the emoluments had occasioned the case does not amount to demotion and the claim appears to be misconceived. In regard to the stoppage of increments which fell due in 1947-48, the Bank plea was that increment was withheld on account of unsatisfactory work. This plea may not be good one but the cause of action arose earlier than 13th June 1949 and does not fall within the scope of the Reference. The claim falls on both counts and is dismissed.

(28) *Sundar Lal Saxena*.—The history of the case was given in the application at some length and the grievances of the applicant as gathered from that are two-fold: firstly, that when the suspension order in his case was set aside by the adjudicator Shri K. K. Pandey, Conciliation Officer, U.P., the applicant had become entitled to all the benefits of continuity of service except the conveyance allowance which was specifically disallowed for want of active service in the case of suspension. Secondly, that his discharge from service on the plea that his services were no longer required at a time when he was on leave was arbitrary and was actuated by ulterior motive. The Union representative arguing on behalf of Shri Saxena strenuously contended that the Bank in view of the finding of Shri K. K. Pandey, Conciliation Officer (U.P.), whereby the Bank was directed to reinstate Shri Saxena with continuity of service on the same post from which he was suspended on 6th October 1947 defied the Conciliation Officer's order and withheld the increments of Shri Saxena which fell due during the period of suspension. It was argued that the order of the Conciliation Officer was explicit enough and the applicant was entitled to the increments.

On the other hand Shri Bhatnagar resisting the claim urged that Shri Saxena was not entitled to the increment which fell due during the period of suspension because he had not worked for that period and that the question of increment was not specifically mentioned in the award of Shri K. K. Pandey and the same cannot be inferred from the use of the word 'etc'.

Now the direction given by the Conciliation Officer in this connection reads as follows:

"Shri Saxena should therefore, within 10 days from the date of the receipt of Government Order enforcing the award be reinstated by the Hindusthan Commercial Bank with continuity of service on the same post from which he was wrongfully suspended by the Bank on October 6, 1947, and, for the period commencing from the date of his suspension to the date of reinstatement be paid full salary together with all allowances, except conveyance allowance which he should have received if he had been in active service of the Bank during the same period. He should also be allowed all the privileges with regard to the provident fund, leave, bonus, etc., to which he should have been entitled during aforesaid period if he had been in active service of the Bank."

On the question of increment which fell due during the period of suspension the crux is on the word "etc.". Exception was made only in the case of Conveyance allowance for the simple reason that when one was not in active service he did not require any conveyance allowance for attending the office, but so far as other privileges are concerned, all privileges were allowed to him including leave, bonus etc., and it will be doing violence to the letter of interpretation if increment be not included in those privileges. Continuity of service furthermore means as if there had been no suspension and obviously amounts that all privileges accruing from the date of the suspension to the date of reinstatement were to be allowed to the employee concerned. I have, therefore, no hesitation in coming to the conclusion that increments which fell due during the period of suspension formed a part of the privileges which were granted in terms of the award of Shri K. K. Pandey and Shri Saxena was entitled to the increments which fell due during that period.

Regarding the other part of the claim *viz.* discharge from service, the Union representative on behalf of Saxena vehemently urged that the Bank became prejudiced against Shri Saxena when he was reinstated by Shri Pandey and began to harass him in certain ways and ultimately discharged him with some ulterior motive. It was next argued that Shri Saxena was an active member of the Union also as borne out from the observations of Shri K. K. Pandey in his award regarding the labour activities of Shri Saxena. The other argument advanced was that his case was already pending for the release of increment before the Tribunal and prior permission under Section 33 was all the more necessary. It was maintained that the Bank flagrantly violated the provisions of Section 33 and discharged him summarily without bringing any charge against him on the plea that his services were no longer required. Some documentary evidence in the form of letters (Exhibits D, E and F) were also produced and it was argued that the Union had suspected much earlier that the Bank authority was going out of the way to terminate the services of Shri Saxena.

Shri Bhatnagar in reply to this part of the claim submitted that Hindusthan Commercial Bank after the publication of the All India Industrial Tribunal (Bank Disputes) award was relegated to the position of 'C' class Banks and the management necessarily had to adjust itself and it was in pursuance of this adjustment that instructions were issued to branches for the reduction of staff and the discharge of Shri Saxena from service was the result of this reduction. The Bank representative however had no reply as to why permission under Section 33 was not asked for. He moreover furnished the cause of discharge in his arguments when he himself stated that Shri Saxena after reinstatement was not behaving properly and his attitude towards the employer was disrespectful and therefore his services were dispensed with in the aforesaid measure of retrenchment. The position taken up by the Bank accordingly is rather anomalous. In the first place it was claimed that the termination of service was due to reduction in staff and at the same time it was stated that his services came to end as he was not behaving properly. I need hardly add that if he was disrespectful and was not behaving properly he should have been charge-sheeted and may well have been dismissed for misconduct after due enquiry or permission under Section 33 should have been asked to dismiss him from service. It appears that the Bank did not like to go through the proper procedure and resorted to a measure which was not warranted both in law and fact. My conclusion on merits accordingly is that the termination of the services of Shri Saxena was actuated by malice and it was not only a case of wrongful dismissal but also of victimization.

This brings me to the preliminary objection raised by the Bank that Shri Saxena was an officer and the case is not triable by this Tribunal. This objection normally should have been taken earlier but as observed in some previous cases also my attempt has been to dispose of the cases on point of law as well as on facts as far as possible in order to make the award self-contained in all its aspects. Adverting to the objection the main argument urged on behalf of Shri Saxena was that the post of Sub-Agent in Kanpur did not carry any responsibilities and as such even if he was working as Sub-Agent incharge of a Sub-branch he was not an officer. Particular reference was made to the observations of Shri K. K. Pandey wherein at page 3 of the award, brought on the record, he observed as under:

"As Kanpur is the industrial and commercial nucleus of Northern India the bank has spread over a net work of sub-offices in different parts of the city. These sub-offices are really speaking akin to separate sections of the main Kanpur Branch of the Bank as the person incharge of a sub-office is not independent but works under the direct supervision and control of the Manager of the main Kanpur Branch. These sub-agents are, therefore, like supervisors or departmental incharge and they fall within the definition of "workman". This view is further

confirmed by the fact that whenever any of these 'incharges' are transferred from these sub-offices to the main branch office of the Bank, they are placed there as departmental incharges, supervisors or accountants, etc."

On the other hand Shri Bhatnagar, the Bank representative, in support of the contention argued that Kanpur was one of the biggest branch and Shri Saxena was holding independent charge of a sub-office and it was wrong to say that the office at Kanpur was interconnected. Reference was made to the finding given by the Conciliation Board award Issue No. 2 (para. 13—page 12), and it was argued that in Uttar Pradesh the employees are mainly governed by Shri B. B. Singh award which was clarified by the Conciliation Board award and the case of Sub-Agents and Sub-Managers was discussed in clause (t) while dealing with Issue No. 11 at page 12. This discussion in view of its importance is quoted as under:

"(t) Then there is the case of Sub-Agents or Sub-Managers in sub-branch offices. Shri Arora and Shri Tewari contend that they should also be classed as "workmen". Shri Captain and Shri Thakur oppose this. A sub-branch office is almost a separate unit and the Sub-Agent or the Sub-Manager is at the helm of the affairs. If he too is classed as a "workman" then it would mean that a sub-branch would be without an officer. There can be no office without an officer. It has been argued before me that in the past the Labour Department has treated Sub-Agents or Sub-Managers as "workmen" and has given awards in respect of them. Be that as it may, I have to consider what is the true legal position. I am unable to agree that a sub-branch can be without any officer. I hold that a Sub-Agent or Sub-Manager is an officer and does not come within the definition of a "workman". Similarly Sub-Agents in higher grades of bank offices are officers. They are there to help the Agent."

Now Conciliation Board award was made in April 1949 while Shri K. K. Pandey gave his award in August 1949. It appears that he did not take note of the said award which was almost an authority. I have given my anxious consideration on the question and while weighing the arguments of both sides, I feel inclined to hold that if a sub-branch is without an officer or incharge of the branch it cannot be termed as a sub-branch as observed by the Conciliation Board. The result is that I see no good reason to distinguish the case of Kanpur from the general concept of the Officers-in-charge of a sub-branch as Sub-Agent or Sub-Manager are and while adhering to the finding given in the Delhi State Bank Disputes award, I have no option but to disallow the claim on the legal objection regarding the question of jurisdiction.

(29) K. S. Gupta.—His case is that he was an old employee and was once discharged in 1948 when the order of discharge was set aside by the Conciliation Officer, U.P., and he was reinstated. Since then he had been working alright but the Bank on account of previous prejudice against him wanted to terminate his services and it was on the 30th September 1950 that he was discharged from service on the plea that he was no longer required when he went on a short leave i.e. for two days. It was argued on his behalf that the order was made arbitrarily without obtaining permission under Section 33 and furthermore if there was anything against him he should have been charge-sheeted and called upon to explain. Reliance was placed on the Bombay Bank Disputes award of this Tribunal in the case of Shri N. G. Suvarnapathki (New Citizen Bank).

Shri Bhatnagar, Bank representative, in reply on behalf of the Bank stated that his discharge from service was made on merits and not on account of any prejudice owing to his reinstatement. It was argued that instances are not wanting that some employees who had been reinstated were still working in the Bank. It was stressed that his discharge was the outcome of retrenchment policy which had become necessary as the Bank had become a C class Bank and general instructions were issued for the reduction of staff. It was, however, admitted that no charge-sheet was given nor the applicant was called upon to explain and reliance was placed on the principles in Common Law governing the relationship between Master and Servant.

The stand taken up by the Bank representative was not supported by any evidence that reduction in staff had become necessary and that the services of this employee who was recently reinstated by the Order of the Conciliation Officer had become absolutely necessary in pursuance of the retrenchment policy. Normally it was rather expedient not to throw out of employment one who had been reinstated recently to obviate the charge of vindictiveness. The discharge of Shri Gupta to all intents and purposes appears to have been actuated by prejudice owing

to the previous order of reinstatement passed by the competent authority on the plea of reduction in staff. At any rate in the absence of any evidence that the reduction was made in the staff on the examination of the individual merits of each employee; I have no hesitation in holding that the discharge was unjustifiable and must be set aside once again. As this Bank has been classified under C class and in the case of reduction in staff I think it would not be advisable to allow reinstatement and I think the ends of justice would be met by allowing six months salary plus allowances admissible by way of compensation. The Bank is accordingly directed to pay the above amount within one month from the date when the award becomes effective.

(30) *B. L. Agnihotri*.—The applicant joined the Bank's service in 1946 and his services came to close on 6th October 1950 by the order of the Managing Director which was conveyed to him by the Sub-Agent of Meston Road branch. The reason assigned for terminating his services was that he had become surplus. It was argued that the discharge was made without obtaining permission and the principle of last come first go was not followed.

Shri Bhatnagar, Bank representative, resisted the claim and while explaining the facts submitted that the services of the applicant were no longer required at Meston Road branch and he was asked to go to Gaya but he refused to proceed. His refusal amounted to insubordination and in the consequence his services were terminated. It was emphasised that if there had been any case of victimization he should not have been asked to go to Gaya. Reference was also made to the directions given under para. 322 of the All India Industrial Tribunal (Bank Disputes) award for C class Banks whereby reduction was allowed on 3 months notice or payment of salary in lieu of notice.

The only evidence adduced in support of the plea taken by the Bank representative was the letter of discharge, dated 6th October 1950, which reads as follows:

"Under H. O. Orders, I regret to inform you that your services are no longer required by the Bank and you shall, therefore, be relieved on 7th October 1950.

Sd. C. G. Goel,
Sub-Agent."

This communication is silent on the point that Shri Agnihotri was asked to go to Gaya and he refused to join there and in the absence of any other evidence it seems clear to me that this is purely a case of retrenchment. In the light of the finding given above that in cases of retrenchment permission of the Tribunal is necessary this claim must succeed. As already observed in the case of Shri K. S. Gupta (at No. 28) that this Bank is relegated to C class, the order of reinstatement would not be advisable and the ends of justice would be met if six months salary plus all allowances admissible is awarded by way of compensation. The Bank is accordingly directed to pay the above amount to Shri Agnihotri within one month from the date when the award becomes effective.

(31) *Brij Nandan Lal Katiyar*.—Shri Katiyar joined the Bank's service in March 1947 and was working satisfactorily but all of a sudden he received a notice of termination of his services together with a pay order of 13 days salary of October, 1950 and 3 months wages in lieu of notice on the ground that he had become surplus to the requirement of the Bank. It was alleged *inter alia* that although the Bank's plea was that he had become surplus to the requirement but the Bank at the same time appointed a new clerk at Generalganj office who was transferred from Meston Road office. It was next argued that the permission of the Tribunal was not obtained under Section 33 and the order of discharge was bad in law. On the point of notice it was also contended that three months pay in lieu of notice did not meet the requirements of the directions of the All India Industrial Tribunal (Bank Disputes) which period extends to 5 months notice and as such the Bank did not satisfy that direction as well. Lastly, it was claimed that the Bank had not paid him the full contribution towards Provident Fund amount and the prayer besides reinstatement was that the Bank be ordered to pay the full contribution.

Shri Bhatnagar in reply submitted that the Bank wanted to reduce the staff as the Bank after the All India Industrial Tribunal (Bank Disputes) award was put in C class and in pursuance of the policy of reduction in staff the services of some of the employees were necessarily to be terminated. In this case it was argued that no new man was appointed in place of Shri Katiyar but a more efficient man was transferred from Meston Road in his place.

In this case also the Bank took their stand on the policy of reduction of staff but it was admitted by the Bank representative that the post which Shri Katiyar was holding was not abolished and a more efficient man was substituted in his place. This argument obviously does not constitute reduction in staff in pursuance of retrenchment policy. Of course it is understandable if the principle of 'last come first go' should have been applied and the axe of reduction should have fallen to the juniormost employee. The necessary permission of the Tribunal was also not asked for much less obtained and it was argued that the discharge was effected according to the directions laid down by the All India Industrial Tribunal (Bank Disputes) in para. 322(7) of the award. Now para. (7) deals with contemplated closing down of branches or retrenchment of more than 5 persons and the procedure to be observed also ordains two months notice to the employee concerned with a statement of reason for such proposed action and furthermore to arrive at a decision after hearing the representation of the employee. This procedure was not resorted to and as such reliance on this provision of law was not helpful. The facts are almost identical with the previous case and the relief granted in the case of Shri K. S. Gupta (at No. 28) and Shri B. L. Agnihotri (at No. 29) shall follow. The result is that the employee is granted six months salary plus allowances admissible by way of compensation and the Bank is directed to carry out the above direction within one month from the date of the publication of the award.

(32) *Amrit Lal Vijay*.—The gist of the facts and circumstances narrated in the application comprising over 10 pages is that Shri Amrit Lal Vijay was working to the entire satisfaction of the authorities when it so happened that he organized the employees into a Union and his move was disliked by the employer and consequently his services were terminated vindictively without any justification. It was alleged *inter alia* that a criminal case was filed against him in regard to his previous career in the Central Bank of India but ultimately he was acquitted from that charge. While replying to the objection of the Bank that the applicant had already filed a Civil suit which was pending for the recovery of his dues it was further stated in the application that the relief sought for in the civil court was different from the one asked for here *viz.* reinstatement in service. A copy of the complaint filed in Civil Court was also produced in evidence (Ex. A-1).

The Bank representative took the preliminary objection that the applicant had already chosen a forum by filing a civil suit and as such this claim was not triable by this Tribunal because the prayer in the petition was not only for reinstatement but for the payment of arrears and in the Civil Court the applicant had already claimed an amount of Rs. 7,858 relating to his arrears of pay and all other dues alleged to have been due to him. It was emphasised that the issue in the Civil Court and the issue raised now are the same and the decision of the Tribunal would prejudice the decision of the suit pending before the Civil Court. On merits it was submitted on behalf of the Bank that a charge was levelled against Shri Vijay for complicity in the fraud committed to the extent of Rs. 57,000 regarding some cheques and the case was entrusted to C.I.D. This employee was suspected and was subsequently suspended and on departmental enquiry was dismissed. The Bank representative admitted that the prosecution against the employee had failed and he was acquitted but at the same time maintained that acquittal order by itself does not exonerate him because the charge failed for want of sufficient evidence. At any rate the Bank had lost all confidence in him and could not retain him and was justified in terminating his services. It was argued finally that the plea of Trade Union activities was only advanced in order to camouflage the issue and it had nothing to do with the charge or the termination of his services. Some documentary evidence was also produced in the form of letters, dated 9th October 1950 (Ex. 1), and dated 11th September 1950 (Ex. 2).

Now in regard to the legal objection raised by the Bank (Ex. 1) reveals that the Civil suit was filed on 29th January 1951 and the cause of action was alleged to have arisen on 19th July 1947. Consequently the explanation given by the applicant in the course of arguments *viz.* that the Civil suit for the recovery of his dues was filed in order to save limitation is thus not without force. The prayer in this claim furthermore is mainly for reinstatement which relief could not be claimed in Civil Court and as such I do not think the filing of Civil suit by itself is a bar to the hearing of this claim. On merits, on going through the judgment of the Sessions Judge, dated 19th October 1949 (a copy of which was also placed on the record) I find that the learned judge while summing up in his address to the jury reminded them that the Bank had lost Rs. 10,000 and that the jury had to draw their conclusions from the evidence discussed as to whether the two offences under Sections 420 and 467 I.P.C. had been made out against the accused. The verdict of the jury was that the guilt was not established and the accused was acquitted of the charge. It is also evident from the discussion of the case that positive direct evidence was not available and the decision of the case was hinged on circumstantial

evidence only. In these circumstances I do not think that it would be proper to substitute my judgment in place of the decision arrived at departmentally by the employer, so far the order of discharge from service was concerned. Regarding claim for dues the applicant of his own admission has already filed a Civil suit which is pending and the question of compensation or payment of arrears forms the subject of regular and more elaborate enquiry under Civil Law and needs no adjudication at this end.

(33) *Murli Manohar Srivastava*.—Shri Srivastava joined the Bank's service in 1946 as a clerk and as such was an old employee of the Bank. He was transferred to Gaya on 12th October 1950 outside the State of U.P. and on receipt of transfer order represented his difficulties in going to Gaya but the Bank did not pay any heed. As his father was seriously ill he accordingly applied for 10 days leave but the management granted only 3 days Casual Leave by their letter dated 13th October 1950. On further representation, 10 days more leave was granted from 21st October 1950 to 30th October 1950. On the expiry of the leave it so happened that he fell ill at Kanpur and came under the treatment of Dr. Harkishan Singh who recommended him for one month's sick leave. The management however instead of granting him the leave applied for terminated his services by their letter, dated 7th November 1950. It was argued on his behalf that he did not avoid joining Gaya intentionally but was handicapped on account of his illness although the transfer was made outside U.P. in contravention of the instructions in para 330 of the All India Industrial Tribunal (Bank Disputes) Award. It was also urged that the discharge order was illegal for want of permission of the Tribunal under Section 33. Finally, it was urged that his Provident Fund contribution was not paid to him although under the bye-laws of the Bank one whose services were retrenched did not fall within the mischief of the rule for forfeiture of full contribution towards Provident Fund.

Shri Bhatnagar in reply referred to the correspondence which ensued between the applicant and the Bank regarding his transfer (Exs. 1 to 10) and on the strength of this correspondence it was argued that Shri Srivastava deliberately evaded joining Gaya branch. It was next argued that the applicant was made to understand in the previous communication that he would not be allowed any further extension as evidenced from the Bank's letter, dated 13th October 1950 (Ex. 6). Lastly it was urged that Shri Srivastava had become surplus to the requirements but the Bank in order to absorb him gave him an opportunity to join at Gaya and he avoided deliberately and in these circumstances the Bank was justified in discharging him from service on payment of three months' salary in lieu of notice.

On going through the correspondence (Exs. 1 to 10) the position taken up by both sides boils down to this that the Bank wanted the applicant to join at the earliest while the employee who had been transferred in Bihar was not keeping good health and asked for extension of leave. His reply to the Bank embodied in his letter, dated 13th October 1950 (Ex. 7) was to the effect that since the condition of his father was serious he would request for the grant of 10 days leave in order to enable him to be helpful in the treatment of his father when he was quarrelling between life and death. In another reply, dated 12th October 1950 (Ex. 9), it was urged that he belongs to U.P. and was sick as evidenced from his leave record and it would therefore be difficult for him to go to Bihar and if he had become surplus he very kindly be transferred to some local branch. It was also stated in this communication that his father who was 70 years old was still very ill and he had to attend to home affairs also and under these circumstances his transfer to a local branch would be welcome. On reading this correspondence the dominant impression which I took was that the attitude of the employee was not defiant and his health was far from satisfactory and the Bank authority even could not deny this fact. In these circumstances I am of the considered opinion that his discharge from service was not justified and refusal of leave was unjust and arbitrary. The Bank authority for the worst could treat his absence without pay and no case was made out for invoking the extreme penalty of dismissal or discharge from service. In the result the Bank is directed to take him back in service as well as to pay him six months' salary plus allowances admissible as compensation prior to reinstatement and this direction shall be carried out within one month from the date of the publication of the award.

(34) *Ganga Prosad Mehrotra*.—This employee joined the Bank's service somewhere in 1943 and continued to work satisfactorily. It so happened that in the year 1950 a certain fraud was detected in the books of the Bank and he was arraigned for that. He was duly charge-sheeted and given an opportunity to submit an explanation. The management, however, suspended him from service on 10th February 1950 and ultimately relieved him on 11th March 1950 but the

actual order of discharge was communicated to him on 6th May 1950, a copy of which was exhibited (Ex. A). The relief sought was for setting aside the order of suspension, dated 11th March 1950 and dismissal order, dated 6th May 1950. Replying to the preliminary objection raised by the Bank in the written statement that Shri Mehrotra was an officer being an Agent, Shri Porwal, Union representative, argued that Shri Mehrotra no doubt was working as an Agent but as he happened to work at Lucknow where the Inspector of Branches as well as the Managing Director also worked, he was not working independently. It was concluded that as he was working under the supervision of the higher authorities he could not be dignified as an officer although he was designated as an Agent. In this connection it was also emphasised that it was the Inspector of Branches who suspended him and in case he had been a full fledged officer as an Agent he should not have been suspended by the Inspector of Branches but by higher authorities. Reference was made to Articles of Association clause G (Page 26) whereby it was only the Director who had the authority to suspend the Managers.

Shri Bhatnagar on behalf of the Bank pressed the preliminary objection that the applicant does not satisfy the definition of 'workman' as he was working as an Agent and was entrusted with all the directional and controlling powers of the Bank. He actually worked as Agent in more than one branches viz. Allahabad, Banaras, etc. Reliance was placed on this Tribunal's award wherein Agents and Sub-Agents have been held to be officers and not workmen. It was argued that the office of the Director is at Kanpur and not at Lucknow and the Inspector of Branches deals with all the branches and not one branch and even if he happened to be at Lucknow it does not help the applicant because the charge of the Agent was independent and no direction was issued by anybody else.

The applicant admittedly worked as Agent in more than one branches and was an officer as already held in Delhi award. The claim is therefore rejected on this legal ground for want of jurisdiction.

(35) *Shyam Lal Kapoor*.—His case is that he was an old employee having joined the Bank's service in 1943 but his services were terminated on the plea that he had become surplus to the requirements of the Bank on 30th September 1950. He, however, does not want to go back in the Bank's service and his prayer is for the grant of compensation only as he was illegally and unjustifiably discharged from service on payment of one month's salary only. Lastly it was also submitted that the applicant was entitled to full contribution towards Provident Fund.

The position taken up by the Bank in reply was that the applicant was paid three months' salary at the time of the termination of his services according to the procedure laid down by the All India Industrial Tribunal (Bank Disputes) in their award para. 322 and the applicant was not entitled to any more payment by way of compensation. Regarding the Provident Fund contribution, Shri Bhatnagar, Bank representative, stated that the Bank was prepared to pay the Provident Fund money as well as one-half contribution according to Bank rules because the applicant had not completed 10 years service and was not entitled to full contribution. A copy of the Provident Fund rules was placed on the record. Now under Rule 14 it was laid down in Clause (b) that:

"14(b) If at any time prior to the expiry of the said period of 10 years a member discontinues his membership of the Fund, or resigns or retires from the service of the Employer with the consent of the Employer or is discharged by the Employer, he shall be entitled to the amount then standing to his credit under the head "Member's Subscription" with all interest and accretion due therein to the day he discontinues his membership or resigns or retires or is discharged. As regards the Employer's Contribution, the Board of Directors may subject to Rule 15 at their full discretion pay to any such member who has completed 5 years service with the Bank 50 per cent. and to a member who has served for 7½ years 75 per cent. of the amount standing to the credit of such member under this head, and transfer the balance to the Lapsed Fund."

In the light of this rule no interference in the Provident Fund demand is called for and it is left to the applicant to collect the amount which becomes due to him under rules when he has no mind to go back in the Bank's service. Regarding the other demand for compensation, the applicant in the statement of claim in paragraph 7 has specifically asked for two months' pay while claiming 5 months' pay under the directions laid down under para. 322 of the All India Industrial Tribunal (Bank Disputes) award. The employer has also taken stand on the directions embodied in para. 322 of the aforesaid award and in view of the common

stand taken up by both parties I think with the application of those directions the applicant is entitled to two months salary more by way of compensation instead of retrenchment relief at the rate of half month's salary for each completed year of service as awarded in similar cases. The Bank is directed to carry out the direction within one month of the publication of the award.

(36) *Ram Saran Kapoor*.—The applicant joined the Bank's service on 25th November 1943 and was working alright when he was charge-sheeted on the 3rd January 1951 to the effect that he had contravened the instructions given by the Inspector of Branches in purchasing clean bills whereupon he was called upon to submit his explanation by letter, dated 3rd January 1951 (Ex. A). He submitted his explanation (Ex. B). He was however informed by the Inspector of Branches that the explanation submitted by him was not found satisfactory by the Head Office and consequently the management decided to terminate his services from 19th February 1951 and that his salary and allowances up to 19th February 1951 were being credited in his account in Chowk Branch under advice to the applicant. It was argued on his behalf that the charge against him was not substantiated and whatever he did, he acted in good faith in consultation with Shri A. N. Kapoor, his predecessor, who was staying there. It was next argued that instructions no doubt were issued by the Head Office but in actual practice they could not be strictly observed to get on with day to day work.

Shri Bhatnagar, Bank representative, opposed the application and referred to circulars issued to all branches, dated 3rd February and 22nd February 1947 (Exs. 2 and 3), in regard to the advances made by the Bank to their constituents wherein it was specifically mentioned that strict compliance was needed. It was argued that the applicant in contravention of these instructions accommodated Messrs. Motilal Khatri in advancing the amount of Rs. 62,000 by two cheques—one was on Central and the other on Allahabad Bank which were situated in the same locality. It was emphasised that the question of good faith does not arise when his actions were circumscribed by the instructions of the Head Office which were set at naught.

The cases of unauthorised advances made by the incumbents incharge have been discussed in more than one claims and although each case is to be decided on its own merits the one common factor viz. as to whether the offender deliberately contravened the instructions of the head office and had repeated his conduct despite warning will be the determining factor in this case also. The stand taken up by the applicant was rather curious viz. that the work could not go on if instructions should have been strictly observed. Obviously it was no business of the applicant to see that he must get more work in contravention of the head office instructions when there was every likelihood of loss if the unauthorised advances proved ultimately misplaced. At any rate the question revolves on the conduct of the employee and in this case the applicant defied the instructions deliberately. In these circumstances his conduct amounted to misconduct and the claim for reinstatement must fail. The same is disallowed.

(37) *Kashi Prasad Tandon*.—The applicant was not present but his brother Shri H. N. Tandon produced a letter of authority to represent him but he was not allowed to address. The case, however, was heard in *absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. His case is that the applicant joined the Bank's service on 1st April 1948 as a typist cum clerk on probation and was to be confirmed on the expiry of 6 months period i.e. by 30th September 1948. The management, however, did not confirm him and thereby contravened the terms of Shri B. B. Singh award.

Shri Bhatnagar on behalf of the Bank raised a preliminary objection that the cause of action arose before 13th June 1949 and as such the Tribunal had no jurisdiction to try this case inasmuch as it does not fall within the ambit of the Reference.

The objection obviously prevails with the result that the claim is rejected for want of jurisdiction.

XVI. Reference No. 43 of 1950

HINDUSTAN MERCANTILE BANK LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, etc., for U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun). None for the Bank.

Stoppage of shoe allowance to the subordinate staff of the Bank.—This is the one case in which the Bank representative did not appear and sent a communication

asking for the decision to be made on pleadings. The case was accordingly heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules.

The Union's case is that the subordinate staff of the Bank at Kanpur was getting the privilege of shoe allowance since long which was being paid @ Rs. 4 since 1947. The amount was subsequently raised to Rs. 6 in view of the increased price but the Bank had stopped this allowance in the year 1950 without assigning any reason. It was alleged *inter alia* that under the terms of Bind Basini Prasad Conciliation award no employer is entitled to discontinue better privileges already allowed to the employees and that by the stoppage of the shoe allowance the Bank had changed the service conditions of their employees and had thus violated the provisions of Section 33 of the Act. The prayer sought was for the restoration of the special shoe allowance @ Rs. 6 per annum with retrospective effect. Reliance was placed on the Conciliation Board award para. 10 (page 5).

The Bank's case as disclosed from the written statement was that shoes were being supplied to the subordinate staff of Kanpur office to those who were deputed on outdoor duties but no separate allowance was paid for shoes. It was further contended that shoes do not form a part of uniform and as such the supply of shoes was discontinued as a measure of economy. Replying to the contention that the allowance was governed by the terms of B. B. Singh award it was stated that no specific mention to shoes was made in that award. It was next argued that the award was not in force now and this allowance was not being enjoyed by the employees of other Banks and this Bank also brought the practice on the lines of other Banks in order to economise expenses.

On the appreciation of the facts given above I am of the opinion that no change in service conditions has taken place as to attract the provisions of Section 33 and the claim is devoid of any substance with the result that the claim is disallowed.

XVII. Reference No. 48 of 1950.

NARANG BANK OF INDIA LTD

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, etc. for the U.P. Bank Employees Union, Kanpur (appeared at Dehra Dun).

Shri Krishna Dev, Legal Adviser, for the Bank.

Behari Lal.—This employee was working in Narang Bank and had put in about 3 years service satisfactorily. It so happened that on 1st January 1950 he applied for leave on the ground of sickness for a week but as he was still ill he applied for extension in the first instance for 4 days and then for two months supported by Medical Certificate. The Bank, however, terminated his services on 24th January 1950 without any previous notice or considering unavoidable absence on sickness. It was maintained that the discharge order was not warranted in fact and law. A copy of the application, dated 9th January 1950 (Ex. A), and another application with an endorsement of Dr. Basu recommended for two months leave for rest (Ex. B) were produced in evidence. . . .

The Bank representative in reply submitted that the applicant worked till 4th January 1950 but he left abruptly without applying for leave and without giving charge of cash etc. An affidavit of Shri Dharamchand Sharma, Assistant Manager, Nababganj Sugar Mill, duly attested by Magistrate First Class was produced in evidence in support of this allegation Shri Kishan Dev arguing further categorically denied that Shri Behari Lal had applied for leave and obtained sanction before leave on 4th January 1950. It was argued that the Bank waited for some time and when he did not turn up his services came to close and a new man was employed in his place. The Bank representative, however, admitted that some applications were received after 24th January 1950 when the services of Shri Behari Lal had already terminated. Shri Kishan Dev also came into the witness box and on oath stated that Shri Behari Lal was known to him who had left his post on 4th January 1950 without having applied for leave and the Bank after awaiting for some time dispensed with his services. There is some confusion in the matter of applications because copies of leave applications, dated 9th and 12th January 1950 indicate that leave was applied for before the date of discharge but the sworn testimony of Bank representative is to the effect that these applications were received after 24th January and as the applicant left his post by 4th January 1950 he was treated as an absentee.

This Bank is in C class and I do not think that even if it was a case of unjustifiable discharge reinstatement could be allowed and the ends of justice will be met by awarding compensation at the rate of half month's salary plus all allowances

admissible for each completed year of service. The Bank is directed to carry out the above direction within one month from the date when the award becomes operative.

XVIII. Reference No. 50 of 1950

NATIONAL BANK OF LAHORE LTD.

APPEARANCES: Shri A. C. Kakkar, Shri V. N. Sekhri, Shri B. K. Porwal, etc. for the U.P. Bank Employees Union, Kanpur (appeared at Naini Tal).

None for the Bank.

P. L. Anand.—The claim was not pressed and the same is deemed to have been withdrawn. The application is filed.

XIX. Reference No. 63 of 1950

LUXMI COMMERCIAL BANK LTD.

K. L. Bedi.—The applicant was not present and a communication dated 4th June 1951 was received from him that he had finally settled his claim with the Bank and that the proceedings initiated by him be dropped. The claim accordingly is filed having been withdrawn.

XX. Reference No. 127 of 1950

DASS BANK LTD.

APPEARANCES: Shri H. N. Tandon in person.

None for the Bank.

H. N. Tandon:—The applicant's case is that he joined the Bank's service as Head Cashier in the year 1943 and continued working when he received a notice of discharge from the Calcutta High Court on 13th July 1948 due to the closing of Allahabad branch. It was alleged *inter alia* that on the date of receiving the notice of discharge he had received his pay only up to February 1948 and was thus entitled to get his pay from 1st March to 13th July 1948, the date of discharge. His other claim was to the effect that he was entitled to Dearness Allowance at the rate of Rs. 20 p.m. according to the terms of the U.P. Labour Commissioner's award. But he was getting only Rs. 15 per month and the balance was still due to him. Lastly it was claimed that his security money was also not refunded (Rs. 2,000) which was initially deposited on his appointment.

The position taken up by the Bank was that the Bank had already gone under moratorium by the orders of High Court and under the scheme of arrangement passed by the High Court dated 22nd July 1948 the services of Shri Tandon had come to close because the branch at Allahabad was dissolved. On merits it was submitted that the discharge order was to take effect from 24th March 1948 the date on which Allahabad branch was closed under the orders of the High Court and sealed by the Official Receiver and not from July 1948 when the notice of discharge was issued to the applicant by the High Court. In regard to his claim for enhanced Dearness Allowance it was also submitted that the salary of the applicant was increased to Rs. 80 plus Dearness Allowance and he was not entitled to get any further Dearness Allowance. Replying to the contention of the applicant in regard to the security money it was averred that this was wrong to say that he had deposited any security of Rs. 2,000; in point of fact he had a fixed deposit account of Rs. 2,000 as evidenced from the fixed deposit receipt produced. The applicant had also obtained a loan out of that fixed deposit and this amount has been characterised as fixed deposit and not as security for his service. Finally it was submitted that the cause of action arose much earlier than 13th June 1949 and the claim does not fall within the scope of Reference.

The legal objection taken at the end obviously prevails because the cause of action arose in 1948 and the Tribunal has no jurisdiction over the matter. The claim accordingly fails on this legal ground and need not be probed further. The same is rejected.

This brings to 'fnis' the hearing of the claims and complaints emanating from various States of India on the issues referred to this Tribunal for adjudication under Notification No. LR.2(273), dated 21st February 1950. It started with West Bengal and finished with Uttar Pradesh which State was taken up last in view of the largeness of number of applications from that State. There is, however, one more feature which may well be mentioned here and that relates to some applications filed under Section 33-A from Madras State and one from Madhya Pradesh

as well as several applications filed from Uttar Pradesh State through U.P. Bank Employees Union under Section 33-A. As the term 'pendency' used in Section 33 of the Act signifies a period having a definite beginning and a definite end, it may therefore be made clear that so far all other States excepting Madras, Madhya Pradesh and Uttar Pradesh are concerned, no dispute under this Reference remains pending.

The last word relates to acknowledgments and in this respect it becomes my pleasant duty to acknowledge gratefully the assistance of Shri N. C. Kuppuswamy, Under Secretary to Government of India, Ministry of Labour, rendered in the matter of securing accommodation for the sittings of the Tribunal in various States and the Chief Secretaries and Labour Secretaries of the States of Orissa, Punjab, Bombay, Madhya Pradesh, Madras, Mysore, Bihar and Uttar Pradesh.

Now, THEREFORE, this Tribunal makes its Award in the terms aforesaid, this the 10th day of August, 1951.

K. S. CAMPBELL-PURI, *Chairman,*

Central Government Industrial Tribunal, Calcutta.

[No. LR-90(137).]

New Delhi, the 4th September 1951

S.R.O. 1402.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the management of the Digwadih Colliery and the Tata's Collieries Labour Association.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD.

Reference No. 13 of 1951.

PRESENT:

Shri S. P. Varma, Barrister-at-Law, *Chairman.*

PARTIES

The Tata's Collieries Labour Association

Vs.

The management of the Digwadih Colliery, namely Messrs. Tata Iron and Steel Co. Ltd.

APPEARANCES:

For the Management:—Shri S. S. Mukherji, B.Sc., B.L., Pleader.

For the Workmen:—Shri K. Bhattacharji, Advocate, along with Shri B. N. Sharma, General Secretary, Tata's Collieries Labour Association.

AWARD

By a notification No. LR.2(340), dated 15th May 1951, the Government of India in the Ministry of Labour referred this dispute to this Tribunal between the Tata's Collieries Labour Association and the management of the Digwadih Colliery, namely Messrs. Tata Iron & Steel Co. Ltd. in respect of the discharge from service of the two workmen Messrs. I. D. Ojha, Munshi, Acting Belt Supervisor, and K. Gosain, Miners' Sirdar.

2. Some important points have arisen in this case and I propose to deal with them after mentioning the facts of the case.

3. It appears that on 27th February 1951 the Manager of the Digwadih Colliery deputed an Apprentice Engineer Shri B. N. Roy with some workers to cut off the water tap used by the residents in the area known as No. 12 Digwadih area, on the ground that the Jharia Water Board had taken exception to the use of more taps than was authorised. When the employees residing in that area learned that Shri B. N. Roy had gone there to cut off the supply of drinking water without making any suitable alternative arrangement they approached Shri B. N. Roy to wait till Shri B. N. Sharma, General Secretary of the Association had discussed the matter with the colliery officials.

4. Shri I. D. Ojha, Kali Gosain and a number of other persons were there and they said that when the officers bungalows have got a number of taps in the kitchen, bath room, and in their gardens there is no reason why these workers should be stopped from using the tap which was going to be disconnected. Shri B. N. Roy left the place without disconnecting the tap. His report was submitted to the Manager and it is marked Ex. 'D' of this Tribunal, dated 26th February 1951. It is addressed to the Manager of the Digwadih Colliery. The important portion of that report Ex. 'B' is as follows:

"After removing the soil overlying the main pipe range we proceeded to disconnect the bungalow supply line from the Topchanchi Pipe Range. At this instant we found ourselves helplessly surrounded by a mob of about 20 persons, most of whom were in a drunken state. They appeared to be completely unruly and 'sabotouring' as none of them had any mental balance to enable us to carry out conversations with them. Most of them were equipped with 'lathis'. We tried to make our purpose clear to them but they paid no heed to us. Instead they threatened our personal safety of limb and life. So we had to stop our work at that stage and the matter was reported to you forthwith. The mob was headed by Kali Gosain, Miners' Sirdar, Kallash Singh and Indrasen Ojha."

On receipt of this information a charge-sheet Annexure 'A' of the Union's written statement, dated 1st March 1951 was served upon I. D. Ojha and Kali Gosain. In the meantime an assurance was given by the colliery engineer Mr. Doctor that an alternative arrangement would be made if the pipe line is to be cut. It was restored after a week. The reply of the workers is marked Annexure 'B' to their written statement and this was a denial of the threatening attitude and they say that they might have talked in a loud voice but they said that the occurrence as mentioned in Shri B. N. Roy's report was not correct. On 2nd March 1951 the management suspended I. D. Ojha, and Kali Gosain, from work. After that the management served another charge-sheet upon I. D. Ojha for assaulting B. N. Roy and Kali Gosain for the abetment of the same. These are annexures 'C' and 'D' of the Union's written statement. The charge-sheet against I. D. Ojha is No. 62 and against Kali Gosain is No. 63 and Annexures E and F are replies to the charge-sheets No. 62 and 63 respectively. These two charge-sheets No. 62 and 63 were in connection with the incident that took place on 2nd March 1951 at about 7 A.M. The story is that Shri B. N. Roy while proceeding to his work was assaulted by Ojha outside the quarters of Shri B. N. Roy. The charge-sheet against Kali Gosain is that he planned and carried out an assault on Shri Roy along with I. D. Ojha. The reply to these two charges is to the effect that there was absolutely no occurrence on 2nd March 1951. This incident is referred to in the report of Shri B. N. Roy (Ex. F of the Tribunal), dated 2nd March 1951. An enquiry was started by Shri K. Cursetji, Labour Officer Tata Collieries, and he submitted a report Ex. 'F'. In the meantime on 3rd March Shri Sharma, General Secretary, Tata Labour Association wrote a letter to the Regional Labour Commissioner (Central), and asked him to intervene. This is annexure 'H' to the Union's written statement. In this letter reference is made to the incident of the 27th February 1951 and it is said that that the incident was closed but in order to make the charge-sheet more serious a false story had been devised that I. D. Ojha and Kali Gosain assaulted Shri B. N. Roy on 2nd March 1951. As a matter of fact no occurrence took place on that day what to talk of any assault. There is a complaint in this letter that the Labour Officer of the company who was deputed to conduct the enquiry was acting in a very arbitrary manner. Inasmuch as the Union's representatives were not allowed to be present at the time of the enquiry and a protest against this procedure was sent to the Superintendent of Collieries. The last para. of this letter is important which runs as follows:

"due to the aforesaid reasons a serious situation has arisen and if timely action is not taken, a crisis of the first magnitude may develop out of it and the peace of the colliery may be disturbed. I request you therefore to take immediate step in the matter."

Then on 5th March 1951 Ojha and Kali Gosain wrote to the Labour Officer requesting him to furnish them with a copy of Shri Roy's report and also a copy of the statement of witnesses if any. On 5th March the Labour Officer wrote Annexure 'I' asking them to appear before him on the afternoon of that date, and bringing witnesses if any. When they did not appear they were asked to appear before him on 6th at 10 A.M. at the office of the Superintendent of Collieries. They did not appear on that date even. On 7th March and 8th March letters were addressed by I. D. Ojha to the Labour Officer. On 9th March a letter was

sent by the Union to the Regional Labour Commissioner, Dhanbad, requesting him to take up the matter. This is annexure 'M' of the Union's written statement. In this letter after referring to their grievance that the enquiry by the Labour Officer was not being properly carried out Shri Sharma writes to the Regional Labour Commissioner as follows:

"I like you therefore to take up the case immediately and shall be highly obliged if you kindly visit Digwadih colliery and conduct conciliation proceedings in the case."

Then the Regional Labour Commissioner addressed at letter which is Annexure 'N' of the written statement of the Union to the Superintendent of Collieries, TISCO, Jealgora, which is as follows:

"Enclosed I send copies of the representation dated 3rd March 1951 and 9th March 1951 received from the General Secretary, Tata's Collieries Labour Association, on the above subject, and request you to let me know what you have to say in this connection."

Then there is a letter by the General Secretary of the Association to the Superintendent of Collieries, dated 12th March 1951 requesting him that no further action should be taken since the conciliation proceedings of this dispute had been taken up by the Regional Labour Commissioner. There is also a request that the suspension order should be rescinded.

5. There is a difference of opinion between the parties on the question whether the letter of the Regional Labour Commissioner was received by the management before or after the order of dismissal was passed by Shri Ghosh, Superintendent of Collieries, Tata Collieries, on 11th March 1951. On these materials the Union wants to make out that the dismissal was wrong, (1) because they were not given full opportunity to defend their case and (2) the workmen were discharged during the pendency of the conciliation proceedings. They also urged two further points that there was a breach of Section 33 of the Industrial Disputes Act 1947 because main drivers' case in Reference No. 9 of 1950 of this Tribunal was still pending and that the discharge of workmen amounts to an illegal lock-out under the definition of the Act.

6. With regard to the first complaint whether full opportunity was given to defend their case, it appears from the letters that passed between the Labour Officer and the workers that they were asked to appear before him but they went on asking for copies of certain documents and never appeared before the Labour Officer. The opportunity was given but they never took advantage of it. An enquiry before a Labour Officer with regard to the cases of this kind is not in the nature of judicial enquiry but to find out whether the allegations made against the workers were substantially correct. As to what sort of enquiry is meant under these circumstances, it is to be found in the dispute between Chittivalasa Jute Mills Ltd. and their workers published in the L.L.J., Vol. I, March 1951, at page 130 and towards the end of para. 19 where it has been observed:

"It is pointed out that natural justice requires that the punishment, if any, of a worker should follow an enquiry in which he should get an opportunity to offer his explanation and that the aim of the enquiry should be to ascertain the truth; and that commonsense should be its guide and moral conviction its test. No particular procedure need be followed and it need not be a judicial enquiry."

If I may say so, with all respect, I agree with the observations made in the above mentioned award. I would therefore hold that on this point I. D. Ojha and Kali Gosain can have no grievance against the procedure followed by the Labour Officer, Shri Cursetji.

7. The next point that has been raised on behalf of the workers is that they dismissed during the pendency of the conciliation proceedings. This point is of great importance. The Union say that a letter was sent by the Regional Labour Commissioner (Central), Dhanbad, to the Superintendent of Collieries, Tata Collieries, on 10th March 1951. The order of dismissal passed on 11th March was illegal. They further say that the letter was received at about 8 A.M. on 11th March. Before I deal with the facts I should like to say a few words with regard to the law on this point.

8. At the time that is to say on 10th March when the letter from the Regional Labour Commissioner is said to have been despatched there was no order of dismissal. The only order that existed against the workers was an order of suspension. I may mention here that an order of suspension has not been held

to be a punishment according to two decisions I have come across. One is reported in Vol. I, L.L.J., 1951 at page 37 where it was held:

"that suspension of workmen pending investigation of the charges made against them even if it involves withholding of the wages is not punishment since they have not been found guilty of any offence."

and this case has been quoted with approval in another decision reported in L.L.J., Vol. I, 1951, at page 491 and the relevant passage is to be found towards the end of para 3 of that award.

9. In the present case the first charge-sheet was on 1st March 1951 and the order of suspension was passed on 2nd March 1951. On that date there was another charge-sheet with regard to the assault on Shri B. N. Roy and an enquiry was started by Cursetji immediately after the second charge-sheet. At the time when the letter of Regional Labour Commissioner was written that is on 10th March there was no order of dismissal. Now the question is whether that letter amounts to an initiation of conciliation proceedings and whether it would stop the employer from taking any steps against the workers before receiving that letter.

10. Now the relevant sections of the Industrial Disputes Act 1947 are, Section 2(e) which says that 'conciliation proceeding' means any proceeding held by a conciliation Officer or Board under this act and Section 2(k) defines an 'industrial dispute'. The duties of a Conciliation Officer is mentioned in Section 4 of the Act. The duties are of mediating in and promoting the settlement of industrial disputes. Section 11 of the Act lays down as to how the Conciliation Officer is to proceed. Sub-section (1) of Section 11 says that Conciliation Officers, Boards, Courts and Tribunals shall, subject to the provisions of the Act follow such procedure as may be prescribed. He is to follow the procedure that has been prescribed either in the Act or in the Rules. Relevant rules are to be found in the Industrial Disputes (Central) Rules 1947 and it happens to be Rule No. 7 which lays down that on receipt of information about an existing or apprehended industrial dispute or where the dispute relates to a public utility service on receipt of a notice of a strike or lock-out under Rule 52 or 53, the Conciliation Officer shall forthwith arrange to interview both the employer and workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question. So this rule lays down that the Conciliation Officer forthwith arrange to interview both the employer and the workmen concerned in the dispute at such places and at such times as he may deem fit etc. This is on receipt of the information about an existing or an apprehended industrial dispute or in the case of a public utility service on receipt of notice of strike or lock-out. Rules 8 and 9 are not important although they may be referred to. Then comes Section 12 of the Act where the duties of a Conciliation Officer are mentioned. First sub-section is of importance for the purposes of this point. It runs as follows:

"Where any industrial dispute exists or is apprehended, the conciliation officer may or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner."

It is important to note that in the same sub-section words 'may' and 'shall' have been used. In the case of notice under section 22 the Conciliation Officer has no option but to initiate conciliation proceedings. Whereas in other cases Conciliation Officer may hold conciliation proceedings in the prescribed manner.

11. In the present case no notice of strike was served. Therefore the dispute will come under the first part of the sub-section (1) of Section 12 of the Act and with regard to this sort of dispute the word used is 'may'. It is not very difficult to understand why the word 'may' has been used with regard to one type of industrial disputes and the word 'shall' has been used with regard to another type of industrial disputes. Evidently this is because of the seriousness of the nature of the dispute in the latter class of disputes. Therefore we have to see in this case as to what was done on receipt of the information which the Regional Labour Commissioner received on 9th March 1951 which is Annexure 'M' to the written statement of the Union. It runs as follows:

"SUBJECT:—My letter No. LA/51/51, dated the 3rd March 1951 regarding the charge-sheet of I. D. Ojha of Digwadih colliery.

With reference to my above letter I have to bring to your kind notice that the management of the Tata's colliery has deputed the Labour Officer to

conduct the enquiry in the case of Mr. I. D. Ojha. Mr. I. D. Ojha demanded from the Labour Officer a copy of the complaint and statements of the witnesses of the complainant and he further objected the manner in which the enquiry was being conducted. It is to be regretted that they are acting most arbitrarily and the attitude of the management seems to be quite vindictive.

I like you therefore, to take up the case immediately and shall be highly obliged if you kindly visit Digwadih colliery and conduct conciliation proceedings in the case. I am enclosing herewith a copy of the correspondence exchanged between the Labour Officer and Mr. I. D. Ojha in this connection which will be self-explanatory."

From the above letter it will appear that the complaint is that the enquiry was not conducted properly and the attitude of the management seemed to be vindictive. Therefore the prayer of the Union was as follows:

"I like you therefore to take up the case immediately and shall be highly obliged if you kindly visit Digwadih colliery and conduct conciliation proceedings in the case".

This letter as a result of which the letter of 10th March 1951 was written by the Regional Labour Commissioner to the Superintendent of Collieries was with regard to the suspension and the nature of the enquiry. Naturally the Regional Labour Commissioner wrote as follows:

"SUBJECT:—Suspension of M/S I. D. Ojha, Kailash Singh and Kali Gosain.

Enclosed I send copies of the representation, dated 3rd March 1951 and 9th March 1951 received from the General Secretary, Tata's Collieries Labour Association, on the above subject and request you to let me know what you have to say in this connection."

12. From the above letter it appears that the Regional Labour Commissioner wanted to get some more materials before initiating conciliation proceedings. Because it is only after hearing from the other side as to what the real position was whether the dispute was real or imaginary that he would like to commence conciliation proceedings in the prescribed manner that is by getting two parties together and arrange an interview with the employers and employees concerned with the dispute or he may choose to meet them separately and discuss the matter as mentioned in Rule 8 of the Industrial Disputes (Central) Rules 1947.

On the materials before me I am of opinion that conciliation proceedings had not begun on 10th March 1951.

13. Then the question arises as to what would be the position if it is held that the letter of the Regional Labour Commissioner is a step in the conciliation proceedings. Is the other party that is to say the management affected by this letter before it is actually received by them. My attention has been drawn to section 20 of the Industrial Disputes Act 1947 by Shri Bhattacharji appearing for the Union, where it is said that a conciliation proceeding shall be deemed to have commenced when the notice of strike or lock-out under Section 22 has been received by the Conciliation Officer. Unless a communication is received by a party they cannot be said to be affected by it.

14. In the present case the question of fact arises as to whether the letter of the Regional Labour Commissioner was received before or after the order of dismissal was passed. The management say that they passed the order before the letter was received. The statement on behalf of the Union is that it was received on 11th at about 8 A.M. and the Union say that as it happened to be a Sunday and it also happened to be the Founder's day it was not probable that an order of dismissal was passed on a Sunday. But when the order is noted on a document and the registers show that they were working on a particular Sunday, I do not see any reason to doubt the statement of the management on this point especially when the Union had an opportunity to prove as to when the letter of the Regional Labour Commissioner was handed over to the management.

The Union has not examined the peon who was deputed by the Regional Labour Commissioner to take his letter.

It is said that the letter was handed over to the peon on 10th but he delivered it on 11th. He took his own time. Under the circumstances, I am not quite satisfied that the letter of the Regional Labour Commissioner was received before the order of dismissal was passed as stated by the Union and am not prepared on the

materials before me to doubt that the order of dismissal was passed before the letter was received by the management as stated by the Union.

15. Now the question as to whether the order of dismissal passed against these two workers namely I. D. Ojha and Kali Gosain is a correct one on merits. So far as I. D. Ojha is concerned the witnesses examined on behalf of the management on that point say that I. D. Ojha was the assailant of B. N. Roy. I. D. Ojha was mentioned as one of the prominent persons who led the mob on 27th February 1951. All the witnesses that were examined say that he was the assailant of B. N. Roy. His name was mentioned in the report that was submitted on 2nd March 1951. It is true as was elicited in cross-examination by Shri Bhattacharji appearing for the Union, that no report was lodged before the police. Evidently B. N. Roy being an apprentice Engineer contented himself by simply informing the Manager of the colliery about the incident. I see no reason to interfere with the order of dismissal passed by the management against I. D. Ojha.

16. With regard to Kali Gosain the position is different. He has been mentioned as an abettor of the assault. I held a local inspection of the locality and found that I. D. Ojha and Kali Gosain live in adjoining houses and there is nothing surprising if they go about together. As to the assault on B. N. Roy no one says that he assaulted B. N. Roy. Three witnesses were examined and cross-examined before this Tribunal on this incident. They are B. N. Roy, N. R. Banerji, and Sahadeb Bhandari. Although in his examination in chief B. N. Roy mentioned that Kali Gosain was instigating but he did not say so in his report submitted to the management about this incident. N. R. Banerji known as Sital Babu does not say anything about Kali Gosain's activities although he saw him at the place of the incident. Shri Sahadeb Bhandari says that he found Kali Gosain making gestures but he also says that he could not make out whether the gestures were for going on with the assault or were for dissuading Ojha from continuing with the assault. In this state of the evidence I am of opinion that the evidence against Kali Gosain is almost nil. The order of dismissal passed against him should be set aside, and he should be reinstated within fifteen days of the publication of this award. He is entitled to his full wages which he would have drawn if he were on duty.

17. The next point that has been urged is that these discharges were in breach of Section 33 of the Industrial Disputes Act 1947 because the case of the main drivers from the same colliery which happened to be Reference No. 9 of 1950 of this Tribunal was pending when these orders of dismissal were passed. I am referring to two awards published in the Labour Law Journal, 1951 reported at page 387, Vol. I, and approved by another award reported in Vol. II, 1951, L.L.J., at page 235. In view of the observations made therein and being in full agreement with those decisions, I hold that the dismissals referred to by the Union do not come under the mischief of Section 33 of the Industrial Disputes Act 1947.

18. The other point that was attempted to be made out by the Union was that these dismissals amount to an illegal lock-out by the management. I do not know how they make out that it is an illegal lock-out. If a man is found to be behaving improperly I do not know the reason why he should not be dismissed by the employers if they do not contravene any of the provisions of the prevailing law.

My award in substance is that the dismissal against I. D. Ojha stands and the dismissal against Kali Gosain is set aside and he should be reinstated within a fortnight of the publication of this award and he is entitled to full wages which he would have drawn if he were on duty.

I, therefore, give my award in terms aforesaid.

[No. LR-2(340)]

(Sd) S. P. VARMA, Chairman,
Central Govt. Industrial Tribunal, Dhanbad.

Dated, 23rd August 1951.

ORDERS

New Delhi, the 6th September, 1951

S.R.O. 1403.—Whereas an industrial dispute has arisen between the management of the Selected Tisra Colliery and their workmen in respect of wages and compensation for the workers arising out of the closure of the colliery;

And whereas the Central Government considers it desirable to refer the dispute to a Tribunal for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7 of the said Act.

[No. LR-2(342).]

New Delhi, the 11th September 1951

S.R.O. 1404.—Whereas a industrial dispute has arisen between the management of the Gasilitan Colliery and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act.

Schedule

1. Whether retrenchment is essential, and if so, to what extent;
2. The principles to be followed in selecting men for retrenchment, and the actual list of persons to be retrenched;
3. Gratuity or other concessions which should be admissible to retrenched personnel.

[No. LR-2(346).]

S. MULLICK, Dy. Secy.

New Delhi, the 8th September, 1951

S.R.O. 1405.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the United Commercial Bank Ltd. and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA 20/1 Gurusaday Road, Ballygunge, Calcutta—19.

Reference No. 169 of 1950.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

PARTIES:

The United Commercial Bank Ltd.

AND

Their workmen represented by the U. P. Bank Employees Union, Agra, in respect of the termination of the services of (1) Shri P. M. Rohtagi, (2) Shri Gulab Shankar, (3) Shri Mani Ram, (4) Shri Devi Ram and (5) Shri S. S. Chaturvedi of Agra Branch.

APPEARANCES:

Shri A. C. Kakkar, Provincial Joint Secretary, U. P. Bank Employees Union, Agra, for the employees.

Shri Gouri Shankar Seth assisted by Shri M. Krishnan, for the Bank.

AWARD

This is a Reference made by the Central Government in the Ministry of Labour to this Tribunal for adjudication by Notification No. LR-90(76), dated 7th September 1950 of an industrial dispute between the United Commercial Bank Ltd. and their workmen represented by the U. P. Bank Employees Union,

Agra in respect of (1) Shri P. M. Rohtagi, (2) Shri Gulab Shankar, (3) Shri Mani Ram, (4) Shri Devi Ram and (5) Shri S. S. Chaturvedi, relating to two issues specified in the Schedule.

SCHEDULE.

- (1) Whether the termination of the services of Messrs. P. M. Rohtagi, Gulab Shankar, Mani Ram and Devi Ram on the 29th November 1950 from the Agra Branch of the Bank in preference to other junior men from any other Branch was not just and equitable and those men should be reinstated.
- (2) Whether the termination of the service of Mr. S. S. Chaturvedi from the Agra Branch of the Bank was not justified having regard to the fact that he was reinstated in service only on the 25th September 1950 under the directions of the All India Industrial Tribunal (Bank Disputes).

Notices were issued to the parties directing the employees to file their statements of claim and furnish copy thereof to the employers and to the Bank to file their written statement within 10 days thereafter with a copy to the employees. Statements of claim and the written statements were duly received in due course of time and on the completion of the pleadings the hearing was taken up at Naini Tal in the course of hearing of the Bank cases emanated from U. P. under Notification No. LR.2(273), dated 21st February 1950; on the 15th June and continued till 18th June 1951. The applicants themselves did not turn up and were represented by the Provincial Joint Secretary, U. P. Bank Employees Union, Agra.

The case as disclosed from the statement of claim and stated by the Union representative put briefly is that all these five employees were active members of the Union and two of them happened to be the office bearers of the U. P. Bank Employees Union. All five had joined the service of the Bank almost at the very start of the branch excepting Shri Devi Ram and Shri Gulab Shankar, who joined in the year 1947. So far their work was concerned they were rendering faithful and loyal service to the Bank and there was no complaint against them but the management did not like their Trade Union activities and in order to get rid of them thought of closing the Agra branch which was running quite profitably. On the protest made by the Union, the Bank gave an undertaking to the All India Industrial Tribunal (Bank Disputes) that they would not close any branch, but the management did not respect their own undertaking and dispensed with the services of the aforesaid five employees on the 29th November 1950 by telephonic message received from the Head Office. It was argued that the discharge order in these circumstances was not justified in law and fact and in the first place was made in contravention of the undertaking given to the All India Industrial Tribunal (Bank Disputes); and secondly against the provisions of Section 33 which were deliberately flouted and no permission was obtained from this Tribunal, before whom adjudication of Bank disputes was pending at that time.

The Union representative referring to the case of Shri S. S. Chaturvedi emphasised that this employee was discharged sometime earlier also but was reinstated by the order of the All India Industrial Tribunal (Bank Disputes) in September 1950. The Bank complied with the said order but soon after discharged him arbitrarily along with others on 29th November 1950 and as such his case was one of victimization. A good deal of documentary evidence comprising over the correspondence between the management and the Union as well as copies of resolutions and several other letters addressed to the General Manager, Agra Branch and two charts giving figures regarding the financial position of the Bank, were produced and tendered in evidence (Exhibits A to O).

The Bank's case stated by Shri Gouri Shankar was that the termination of the services of these five employees was due to the fact that their services had become surplus to the requirements of the Bank and the management was not at all guilty of any bad labour practice in discharging them from service. On the question of permission under Section 33 it was maintained that the same was not necessary as no specific case was pending before this Tribunal relating to these employees and the complaint regarding increments of the staff although pending before this Tribunal was in general and it did not relate specifically to these employees. It was also admitted that general proceedings were pending before the All India Industrial Tribunal (Bank Disputes); but that Tribunal was not legally constituted. The Bank representative while explaining the policy of retrenchment and the closure of Agra branch furthermore argued that at the

time when undertaking to the All India Industrial Tribunal (Bank Disputes) was given the management had no idea to close the Agra Branch but subsequently when the Treasurer of Agra Branch resigned and no suitable substitute was made available to take charge of the Cash Department, the Bank had no alternative but to reduce the staff. It was further stressed that the undertaking given to the All India Industrial Tribunal (Bank Disputes) was made with a reservation regarding this Branch where no Treasurer was available to run the branch. The only evidence adduced in support of the pleas consisted of a copy of the Memorandum of Proceedings of the Conference held on 27th November 1950, relating to the position of Agra Branch and the decision of terminating the services of the five employees (Ex. 1) and a copy of letter, dated 29th December 1950, addressed to the Deputy Secretary to the Government of India, Ministry of Labour, New Delhi (Ex.2).

The case was argued at length both on merits and on the legal aspect of the points raised in regard to the permission of the Tribunal which admittedly was not obtained. Normally legal objections are taken up in the first instance if the points raised go to the root of the case but in view of the fact that the legal aspect also is to be considered in the light of some of the evidence brought on the record it would be better to deal with the merits of the case first. In this respect the Union representative referred to the various vicissitudes through which this Agra branch had to pass during the last few years at the hands of the management by frequently referring to the documentary evidence. It was vehemently urged that the United Commercial Bank had designedly adopted a policy of closing this branch in the first instance and then in effecting reduction in the staff with the avowed object of terminating the services of those who were taking active part in Trade Unionism in order to crush the Trade Union activities in the branch. It was stressed that in this campaign they discharged five employees from Agra, two from Kanpur and two from Bindki branch and these discharged persons were neither given copies of the reasons which necessitated their discharge from service nor were given any notice of discharge and their services were terminated by telephonic call from the head office to put down their pens while still working in the office. Reliance was placed on the letter of discharge dated 29th November 1950, (Ex. A) which was issued to all five employees whereby they were relieved of their duties on the same day. Reference was also made to the resolution passed by the executive of the Employees Union on the very day i.e., 29th November 1950 [a copy of which (Ex. B) was placed on the record] whereby Central Government was approached to take action against the Bank for the victimization of these employees as well as Exhibits D, E and F dated 2nd, 11th and 12th December respectively whereby the Manager of the United Commercial Bank was called upon by the Labour Officer to explain the position in regard to these discharges and furnish necessary particulars which were required by the Ministry of Labour. The Union representative furthermore sought to argue on the basis of certain data which was embodied in a statement (Ex. L) in regard to the working of Agra Branch and the policy of the management which drove some of the constituents to transfer their accounts from United Commercial Bank, Agra Branch, to other Banks and it was maintained that this method was adopted by the management in furtherance of a particular policy viz., to show the branch as an uneconomic unit for want of good business. Reference was also made to another documentary evidence which was produced in the form of a compendium of instructions giving therein relative extracts of the correspondence passed between the Manager of the Bank, Agra to the General Manager, Head Office, Calcutta (Ex. M). On the strength of these reports of the Manager, Agra Branch and the financial position envisaged in Ex. L, the Union representative strenuously contended that it was wrong to say on the part of the Bank that some of the employees had become spare to the requirements at Agra branch. It was maintained that as evidenced from the reports of the Manager the strength of the staff was rather insufficient and furthermore the work was carried on with the help of fresh hands with the result that the work was dislocated in this branch and was put into arrears. Shri Kakkar, the Union representative in the course of discussion of this documentary evidence also brought on the record a copy of a confidential letter dated 27th March 1951, addressed to the General Manager, United Commercial Bank, Calcutta, by the Manager of Agra branch (Ex. N) showing the number of vouchers from April 1950, to March 1951 (Ex. O) and further argued that these documents were proof positive that the Manager of Agra Branch was not satisfied with the policy adopted by the Head Office and requested Head Office to do something to help him and in case the strength of the staff could not be increased he suggested to the Head Office to curtail business in order to ease the situation. The suggestion in this connection was that some of the Banks be asked not to send any bills for collection because quarterly closing of accounts was at hand and the Manager

was at a loss to know how he could be able to put it through. The Union representative in summing up claimed that Agra branch was running profitably but the management in order to punish the employees who were participating in Trade Union activities went to the length of bringing this branch down and as such the reduction in staff was calculated to sack these five persons out of whom two were office bearers of the Union and others were actively connected. In regard to the position taken up by the Management *viz.*, that no Chief Cashier was available at Agra branch and consequently the management thought of closing this Branch and subsequently made reduction in staff, the Union representative while controverting the argument relied upon a letter dated 30th November 1949 addressed by the Deputy Chief Accountant, United Commercial Bank, Calcutta to Manager, Agra branch in the matter of appointment of Chief Cashier as well as to another letter dated 7th December 1949, addressed by the Manager to the General Manager on the question of resignation of the Treasurer Radha Kissen Buijnath and the appointment of some Chief Cashier from the existing Cashiers (Exhibits P and Q). It was argued that as evidenced from these letters the Chief Cashiers were available and their names were also submitted for approval and it was wrong to say that the management was put in a quandary for want of any Chief Cashier in this branch. It was maintained that as borne out from the documentary evidence it were the Trade Union activities of the employees which prompted the management to dispense with the services of these five employees who were picked up out of the staff disregarding the wholesome principle of 'last come first go' and that of seniority in service. The next argument advanced by the Union side was that the United Commercial Bank was in the category of A class Bank and regard being had to their status and financial position, it could not be urged that any retrenchment or reduction in staff was necessary. The Bank as a whole was in a very prosperous condition and was making profits to a large extent and even if any one branch had become uneconomic, the employees could be easily absorbed in other branches. Finally, it was urged that the principle of 'last come first go' was also not applied and in point of fact some temporary hands were retained and permanent hands who were connected with the Union activities were discharged with the object of crushing the Trade Union activities of the employees of this Bank. While giving the history of Agra branch it was emphasised that this Branch started in the year 1944 when the number of branches of United Commercial Bank was 20 while the number of branches at the time of reduction in this branch was about 400. It was concluded that the employees who joined earlier were senior persons and even if any retrenchment for the sake of argument was needed they should not have been thrown out of employment because the services of the employees were transferred inter-se. Lastly it was urged that the order of discharge of all these five employees was manifestly bad in law inasmuch as this Tribunal was functioning on the date when their services were terminated and prior permission of the Tribunal under the amended Act was absolutely necessary and could be sought for. Reliance was placed on the findings of this Tribunal in Bombay and Madhya Pradesh Bank disputes awards in the case of V B Belkhode and others.

Adverting to the case of Shri Chaturvedi in particular it was submitted that this employee was discharged sometime earlier but was reinstated in terms of the award of the All India Industrial Tribunal (Bank Disputes) in September 1950 only when he was again discharged from service in November 1950. It was stressed that this attitude of the Bank amounted to victimization inasmuch as the Bank flagrantly violated the provisions of the Industrial Disputes Act in discharging a person within three months from the date of his reinstatement although the award had to remain in force for full one year under the Act.

Shri Gouri Shankar, the Bank representative rising to reply dubbed the previous history narrated by the Union representative as well as the documentary evidence adduced in connection with the working of Agra Branch and the policy of the management in the matter of closing the branch in the first instance and then making reduction in staff as wholly irrelevant. In regard to the documentary evidence adduced in support of the allegation made by the Union, strong objection was taken to the production of a copy of the confidential letter (Ex. N) and the return of vouchers prepared by the Inspector of Branches (Ex. O) as well as the correspondence between the head office and the Manager Agra Branch on the appointment of Head Cashier (Exs. P and Q) and it was rather garrulously asserted that it was no business of the Union to take hold of the confidential record of the Bank and make use of it in these proceedings. Shri Gouri Shankar also denied the correctness of the figures given in the statements (Exs. L and M) produced by the Union side, but did not repudiate this part of the evidence by adducing any other evidence in contra-distinction to this in order to show that the figures given in this statement (Ex. L) or the extracts of reports of the Manager

(Ex. M) were not correct. Now the objection of the Bank representative on the production of this documentary evidence is to be considered from two different angles, firstly as to how far the Labour Unions are entitled to make use of the confidential record or as a matter of fact to secure copies of important confidential documents while working as employees in the Bank and secondly when this evidence has already been placed on the record as to whether the Tribunal is barred from considering over the matter which this evidence furnishes or in other words regarding the admissibility of the evidence. I have already made certain observations in the Delhi Bank disputes award with regard to the production of photographic copies of certain confidential documents by the Union side and would content myself to repeat it again that this practice from strict legal as well as ethical view point does not appear to be proper but the employee can be duly dealt with by competent authority when this question is posed as such in regard to the privileges and rights of the Unions as well as their duties and responsibilities towards their Employer. What I am concerned at present is as to the evidentiary value of these documents and I need hardly add that so far the question of admissibility is concerned the provisions of Evidence Act do not strictly apply and in the matter of adjudication under the Industrial Disputes Act the basic principles of law and natural justice must have their course. In this view of the matter the evidence which has been duly exhibited shall have to be considered on its own merits. Shri Gouri Shankar on the merits of the case did not say much and in support of the plea *viz.*, reduction in the staff of Agra Branch, he relied on two documents (Exs. 1 and 2) placed on the record. Exhibit (1) is a copy of the Memorandum of Proceedings of the conference held in the General Manager's room on the 27th November 1950 whereby it was decided to reduce the staff as the Agra branch was running at a loss and that in pursuance of the above decision services of (1) Shri P. M. Rohalgi, Supervisor, (2) Shri Gulab Shankar, clerk, (3) Shri S. S. Chaturvedi, clerk, (4) Shri Mani Ram, Jamadar and (5) Devi Ram, Chowkidar (applicants of this Reference) were terminated as they were surplus to the Bank's requirement after payment of dues in terms of All India Industrial Tribunal (Bank Disputes) award. It was also noted in this order that the supervisor's and the Jamadar's post may be abolished. The other document (Ex 2) is a letter dated 28th December 1950, addressed to the Deputy Secretary, Government of India, Ministry of Labour, New Delhi, wherein exception was taken to the decision of the Ministry to reter this question as a dispute to the Tribunal when there was really no dispute and furthermore without caring to wait for the remarks of the employer. This documentary evidence merely furnishes the decision arrived at by the Head Office in the matter of termination of services of the applicants and does not lead to any tangible evidence in rebuttal to the one adduced by the other side.

Shri Gouri Shankar accordingly confined his arguments mainly on the legal objections and these may briefly be summarised as below for facility of discussion:

- (1) That the termination of the services of these employees was brought about under the directions given in para. 322 of the All India Industrial Tribunal (Bank Disputes) award and as such the order of discharge was not bad in law.
- (2) That the permission under Section 33 was not necessary because no specific case of the employees concerned was pending before this Tribunal and the undertaking given to the All India Industrial Tribunal was not binding because the said Tribunal was not legally constituted.

In regard to the first objection it was argued that the services of any permanent employee could be terminated on three months notice or on payment of salary and allowances for three months. It was emphasised that the directions in clause (1) of para. 322 of the All India Industrial Tribunal (Bank Disputes) award applied to all employees irrespective of their trade Union activities. The argument was further stressed that under the directions of para. 322 the employer was authorised to terminate the services of any employee on payment of three months salary even if the employee had not committed any offence and without assigning any reasons which can only be disclosed when asked for as directed in para. 322(2). It was further argued that the number of employees in question was five and clause (7) of para. 322 does not apply which relates to the closure of a branch or retrenchment in a branch comprising of more than 5 employees. While referring to para. 322 of the aforesaid award Shri Gouri Shankar at the same time stated that the award was no longer binding but these directions were applied when the award had not yet been declared void and moreover the aforesaid directions can

be treated as good argument. The Union representative in further reply controverted the argument and maintained that directions given in para. 322 do not apply on the facts of this case and that the construction put on para. 322(7) of the All India Industrial Tribunal (Bank Disputes) award was not correct inasmuch as the word 'Branch' was never used in that paragraph and the words used are "closing down or retrenchment of more than five employees" and that in point of fact more than five employees were discharged and as such the procedure adopted was contrary even to the directions embodied in para. 322 of the award.

Now on facts, the documentary evidence brought on the record by both sides is indeed of an extra-ordinary type and makes an interesting reading. Shri Kakkar sought to argue on the strength of this evidence that the employer in order to crush the Trade Union activities of Agra Branch embarked upon a certain plan and designcdly brought down the working of the Agra branch to prove itself an uneconomic unit and a losing concern. This argument was sought to be verified by referring to the various reports of the Manager showing that work was available but the same was not being availed of and secondly, by referring to certain figures that Agra Branch was a profitable concern but on account of the policy adopted by the Bank some of the good constituents for want of facilities afforded to them transferred their accounts to other Banks and in this process a time was reached when the General Manager in his office called a conference and on the basis of certain statistical figures declared the Branch as an uneconomic unit and axe was applied by way of reduction on those who were not wanted. It was emphasised that no care was taken in regard to the seniority or to their faithful service and no effort was made to absorb them in other branches when the Bank was admittedly a prosperous institution as evidenced from the documentary evidence. Shri Kakkar traced the history from the time when he as Joint Secretary of the Union attended the sittings of the All India Industrial Tribunal (Bank Disputes) at Bombay up to the present time and in this connection made a reference to the undertaking given by the United Commercial Bank to their lordships of the All India Industrial Tribunal (Bank Disputes) not to close Agra branch and to maintain *status quo* during the pendency of the proceedings. Reference was also made to the pendency of a claim filed on behalf of the whole staff by the Union in this Tribunal under Notification No. LR.2(273), dated 21st February 1950 for which a notice (Ex. H) was issued under the signature of Shri F. Jeejeebhoy, Chairman, Central Government Industrial Tribunal at Calcutta, dated 14th June 1950 and it was argued that the management deliberately in pursuance of the aforesaid policy had thrown these employees out of employment. This phase of the case, however will be dealt with while dealing with the legal objections and reverting to the facts and on the appreciation of the evidence as a whole what appears to me is that the Bank was not happy on the working of Agra Branch. There is, however, no direct evidence on the record to establish that the management was actuated by malice or malvolence against the employees and resorted to this subtle method of incurring loss to themselves in order to create an occasion of terminating the services of five employees of whom two belong to the menial staff and two are clerks only. It is too much to say, if not idle to argue that the management of the eminence of United Commercial Bank was out to cut its nose to spite the malice on this lot of five employees comprising of menial staff, clerks and supervisor by adopting this method of slow poisoning of their own business as urged by the Union representative. The management in order to do away with their labour activities if annoyed could transfer the most active employees to some other branch and if at all was sick of their activities could resort to disciplinary methods than to launch a plan over several months of bringing down the business from profit to loss in the Agra branch and then to strike at the employees by terminating their services. Shri Kakkar tried to build the case on the basis of salvaged pieces of documentary evidence and however plausible and specious the position may look at first sight it collapses to the test of scrutiny when considered through and through in the light of normal working of administration. I am therefore not satisfied that the discharge of these employees was engineered in the manner suggested by the Union side. But this much is abundantly clear to me on going into the whole case and taking a broader view that the management had no soft corner for some of the employees and was not prepared to consider their case on the score of their previous record and the length of service or to apply the principle of last come first go. In this respect the decision of the Committee dated 27th November 1950 (Ex. 1) speaks itself that the continuance of five persons was not tolerated even for a single day and they were relieved by telephonic message the same day when they were working in the office as a thunder bolt. Ex. 1 furthermore discloses that Head Office had already received reports about these five persons otherwise in the matter of reduction some time must have been spent as to whose services were to be

retrenched taking into consideration his length of service, seniority, etc. The Bank representative did not care to bring on the record any documentary evidence in support of the decision arrived at by the head office that these persons had become surplus as compared with others. It is also in evidence that United Commercial Bank is on good sound footing and if the management had treated their case sympathetically some effort should have been made to absorb some of them in other branches.

Regarding legal objections, and taking the first one *viz.* that the services of these employees were terminated with the application of the directions given in clause (1) of para. 322 of the All India Industrial Tribunal (Bank Disputes) award, the aforesaid clause upon which reliance was placed reads as follows:

"(1) In cases not involving disciplinary action (i.e. in cases in which the employee in question has not *prima facie* been concerned in the commission of an offence or in any act or omission falling within the scope of gross misconduct or minor misconduct as defined above) and subject to clause (7) below, the employment of a permanent employee may be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice, and the employment of a probationer may be terminated by 45 days' notice or on payment of 45 days' pay and allowance in lieu of notice."

This clause is again to be read with the directions laid down in para. 325 in the same chapter and that clause may also be reproduced for the purpose of having complete picture in view regarding the legal aspect of the contention raised by the Bank

"325. The directions given in this Chapter should be deemed to be given not only with reference to items 17 and 22 but also with reference to item 36 (relating to Standing Orders regulating the conditions of service of Bank employees) in Schedule II. The said directions should be understood to be subject to the provisions of any law for the time being in force, for instance, if there be an individual dispute regarding a matter which in the opinion of the management calls for disciplinary action and the dispute has been referred to conciliation or to a Tribunal, the provisions of section 33 of the Industrial Disputes Act, 1947 will apply."

Now, although the Bank representative as said above admitted that the claim of the staff for increment was pending before this Tribunal and the Bank had also given undertaking to the All India Industrial Tribunal (Bank Disputes) not to disturb the *status quo* during the pendency of proceedings, yet he qualified both these factors on the plea (1), that no specific case of these persons was pending before this Tribunal and the question of the increment of staff was general and as such in the light of the words used in Section 33 *viz.* 'employees concerned to the dispute' the permission was not necessary. (2) That All India Industrial Tribunal (Bank Disputes) was not legally constituted and its award was not binding upon the Bank. This cross position obviously is anomalous and to reprobate and approbate one and the same thing at the same time is manifestly untenable. The United Commercial Bank, it was vigorously contended by Shri Kakkar had filed an appeal in the Supreme Court against the All India Industrial Tribunal (Bank Disputes) award soon after its publication and it could not justifiably refer to the availability of the same award in the matter of discharge of their employees. This argument is not devoid of force. Secondly the directions embodied under para. 322(1) apply to genuine cases of retrenchment and could be invoked normally when no dispute was pending. Furthermore it has been specifically mentioned in para. 325 that if there be an industrial dispute relating a matter and the dispute has been referred to conciliation or to a Tribunal, the directions under para. 322 should be understood subject to the provisions of that law. This restrictive provision clinches the matter that in case any industrial dispute was pending before the Tribunal the provisions of Section 322 could not be resorted to. The provisions of clause (7) also cannot be attracted because the number of employees was not more than 5. Shri Kakkar sought to argue that this Bank discharged at the same time more than 5 persons picking them up from more than one branches and as such the number was more than 5 but while considering the question of reduction or retrenchment, one cannot travel beyond the scope of the case in hand.

The other point is embodied in objection No. (2). In this respect the argument of Shri Gouri Shankar centres round the term used in Section 33 "workmen concerned in such dispute". The Bank representative however did not enlighten me with any observation of his own or referred to any authority as to the construction put on these words and contented only on the dictionary meaning

emphasising on the word "workmen concerned." The argument in nutshell was that permission under Section 33 was only necessary when any case regarding these employees who have now been discharged was pending before this Tribunal; and not that any Reference in general relating to the employees of various Banks was pending for the purpose of adjudication. In other words the view adopted by the Bank representative was that only those persons were concerned in the dispute who had already moved the Tribunal on certain grievances and all other employees could be discharged having resources to the directions embodied in clause (1) of para. 322 of the All India Industrial Tribunal (Bank Disputes) award. Shri Kakkar repudiating the argument maintained that in the first place the question in regard to the increment of the whole staff of Agra Branch was pending before the Tribunal and even if specific cases were not mentioned the whole staff was concerned including these five employees. It was argued further that the term 'workman concerned' was not limited to certain persons whose cases had already been placed before the Tribunal but all workmen employed with the Banks concerned in the Reference in order to maintain the *status quo* between the parties for the purpose of harmony and good relations. No authority, however, was cited by both in support of their respective view-points.

On the study of the question involved I find that the term "workman concerned in such dispute" came in for discussion before one of the Adjudicators of West Bengal Tribunal in the case of R.B.S. Jain Rubber Mills and their workers (published in Labour Law Journal—April 1951). The learned Adjudicator was of the opinion that if the legislature had really intended to give a wide meaning; the second phrase "concerned in such dispute" would have been omitted altogether. It was also observed that the rule of interpretation of Statute requires that no word used in a Section could generally be rejected as redundant and as such the legislature appears to have intended to limit the scope of Section 33 to those persons only whose specific cases were pending and who are directly to be affected by the order of the Tribunal concerning them. It was held that other workmen were only remotely interested in the order and as such were not to be governed under Section 33. This view, however, was dissented by another Adjudicator of West Bengal in the case of Eastern Plywood Manufacturing Co. (published in the Labour Law Journal—April 1951). Differing from the view expressed in Jain Rubber Mills award (reported in Labour law Journal—April 1951) it was held that even where the Reference concerned the discharge of certain workers only of a Company, all the workmen of that Company were parties to the adjudication proceedings under Section 18 of the Act and as such all workmen working in that establishment were concerned in the dispute and any alteration in the conditions of service of these workmen without the permission of the Tribunal would amount to contravention of the provisions of Section 33. I have also considered the legal aspect of the question and on looking upon the definition of 'industrial dispute' as given in 2(k); it seems clear to me that all persons who are employed in the Establishment to which the dispute relates on the date of the dispute are bound by the award. This has been specifically mentioned in sub Section (d) of Section 18, which deals with persons on whom settlements or awards are binding. This Clause (d) reads as follows:

"(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

Now it will be seen that there is a reference to workmen in both Section 18 and Section 33 of the Act. And in clause (d) of Section 18 the word 'dispute' appears to be one and indivisible. It follows that the word 'dispute' when relates to all employees including even those who subsequently become employed in that establishment, then how the dispute can be confined only to those who had actually filed specific claims and not others. The word 'concerned' moreover even in its dictionary meaning carries a wide import when read in the context of dispute inasmuch as the word 'concerned' connotes interest or connection and in common parlance means having interest or connected with. It would therefore be doing violence if not striking at the doctrine of collective bargaining on which the Act hinges if the term 'workmen concerned in the dispute', be confined to those workmen only who filed their complaints actually on the call made on all the Banks and Labour Unions. The words, 'during the pendency of proceedings', furthermore imply that the restraint was placed on the powers of the Employer under Section 33 to maintain the *status quo* during the pendency of the industrial dispute. All provisions of the Act are to be read in their context and the wording used in Section 33 cannot be read as a separate item detached from the other

provisions of the Act in order to create a conflict which under the Rule of Interpretation is rather to be avoided. Again when the dispute relating to the employees of this Bank and in particular regarding the increment of the staff of this very branch was already pending before this Tribunal and the award under Section 18 is binding on all those workmen as a whole the inference is irresistible that permission under Section 33 was necessary. At any event in view of the amended Act which came in force on 20th May 1950, no change in the condition of service much less discharge or dismissal from service could be made without obtaining the express permission of the Tribunal and as such I have no alternative but to come to the conclusion irrespective of the findings on the merits of the case that the order of discharge was bad in law and must be set aside.

In the light of this finding my answer to the issue referred to would be that the termination of the services of (1) Shri P. M. Rohtagi, (2) Shri Gulab Shankar, (3) Shri Mani Ram, (4) Shri Devi Ram and (5) S. S. Chaturvedi, on 29th November 1950 when the amended Act had already come into force, was not just and equitable and these employees should be taken back in the service of the Bank and they will also be entitled to receive their back salary plus all allowances admissible under rule for the intervening period. The prayer for compensation for the mental agony and hardship is however a relief under the law of tort and appears to be beyond the jurisdiction of this Tribunal.

Regarding the case of Shri S. S. Chaturvedi in particular as referred to in Issue No. 2, his case differs only on the question of aggravation. It was maintained on his behalf that his case although stands on the same footing with others so far the question of illegal and unjustifiable discharge from service was concerned it was furthermore a case of victimization inasmuch as the Bank out of malice discharged him from service on the pretext of retrenchment while the real case was that the management did not like the order of his reinstatement and in a vindictive manner shunted him off from service soon after having giving effect to the order of reinstatement passed by their lordships of the All India Industrial Tribunal (Bank Disputes), Bombay. Now there is no direct evidence on the record to prove the element of malice but circumstances pointedly go to show that the management discharged him within 3 months from the date of reinstatement although the award was binding atleast for one year and as such exhibited their anxiety to get rid of him.

The definition of victimization has been the subject of various awards and remained in liquid form for a pretty long time. If one adjudicator defined it as the taking of some action prejudicial to the worker on some pretext other than the real reason; yet another held that any order made in bad faith with an ulterior motive amounted to victimization. In some cases mere harshness and arbitrary action was dubbed as an act of victimization or unfair labour practice. The dominant feature of the awards however was that victimization must take the shape of dismissal or discharge for Trade Union activities and in West Bengal awards, a quotation from *Lien's Labour Law Relations* has been oft repeated which is reproduced as under:

"It is well known that a strong inference can be drawn and is usually drawn by the Tribunals in favour of the workers against the employer from the fact that an employee has been discharged either immediately or shortly after his affiliation with the Union or his election to a union office."

This appears to me also a good sound basis but this is not all. To my mind when dismissal or discharge is due to other reasons than the Trade Union activities and amounted to wholly unjustifiable action against basic principles of natural justice, the reasonable inference could be safely inferred that the severity of punishment was influenced by the desire of victimization. Shri D. G. Kamerkar in the Ravalgaon Sugar Farm's case pertinently observed that "a presumption as to unfair labour practice may fairly be drawn where an employee is found to have been dispensed with for no reason whatever or for a reason which is patently false, the true reason being an indirect or unfair motive; and on the presumption remaining unrebutted on the part of the employer, the Tribunal may well consider whether the employee can be reinstated." I think the position has been justly put in these words and I am in general agreement with this dictum. Applying this test on the facts of this case, I have no hesitation in holding that the order of discharge of Shri Chaturvedi from service was unjust and also amounted to victimization. In the result my answer to both the issues referred to above, firstly in the case of (1) Shri P. M. Rohtagi, (2) Shri Gulab Shankar, (3) Shri Mani Ram, (4) Devi Ram and secondly relating to Shri S. S. Chaturvedi is in the affirmative viz. that the termination of the services of these employees was not just and equitable

and that these men should be reinstated. The Bank is accordingly directed to take back all the five persons named above in their service as well as to pay them their back salary and allowances admissible for the intervening period within one month from the date when the award becomes operative.

Now, THEREFORE, this Tribunal makes its Award in terms aforesaid, this the 10th day of August 1951.

K. C. CAMPBELL-PURI, Chairman,
Central Government Industrial Tribunal,
Calcutta.

[No. LR90(140)]

ORDER

New Delhi, the 11th September 1951

S.R.O. 1406.—Whereas an industrial dispute has arisen between the management of the Central Kankaneey Colliery and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act.

Schedule

1. Weekly earnings of wagon loaders to be raised to the level recommended by the Conciliation Board.
2. Compensation for surface and underground trammers for the less of their weekly earning if it is less than what they would get in accordance with the recommendation of the Conciliation Board.
3. Primary school to be opened at the colliery premises.
4. The rate of payment of Mahabir Mistry, Blacksmith, Assistant Fitter and carpenter to be raised to the prevailing rates in neighbouring collieries

[No. LR-2(330).]

N. C. KUPPUSWAMI, Under Secy.